

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
5 GEORGE PACKARD, EDWARD BECK,
6 MICHELLE BERGER, ARI COWAN, CONNOR
7 HICKS, CHARLES MEACHEM, CHRIS PHILLIPS,
8 LARRY SWETMAN and AMADON DELLERBA,
9 individually and on behalf of all others
10 similarly situated,

11 Plaintiffs,

12 vs.

13 THE CITY OF NEW YORK, a municipal entity,
14 Defendant.
15 -----x

16 DEPOSITION OF LT. DENNIS GANNON
17 September 7, 2018
18 New York, New York
19 10:14 a.m.
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21

22 Reported by:
23 Elizabeth Santamaria
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Deposition of LT. DENNIS GANNON,
held at the offices of Wylie Stecklow, PLLC,
217 Centre Street, New York, New York, before
Elizabeth Santamaria, Court Reporter and
Notary Public.

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A P P E A R A N C E S

ATTORNEYS FOR THE PLAINTIFFS:

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BY: AMY ROBINSON, ESQ.

JONI FORSTER-GALVIN, ESQ.

ALSO PRESENT:

Carrie B. Talansky, Esq. NYPD Legal Bureau

Joseph Sharkey

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IT IS HEREBY STIPULATED AND AGREED,
by and between counsel for the respective
parties hereto, that the filing, sealing and
certification of the within deposition shall
be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form of
the question, shall be reserved to the time of
the trial;

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed
before any Notary Public with the same force
and effect as if signed and sworn to before
the Court.

* * *

1 Gannon

2 L T. D E N N I S G A N N O N, having been first
3 duly sworn according to law by the Officer,
4 testifies as follows:

5 EXAMINATION BY

6 MR. STECKLOW:

7 Q. Please state your name for the
8 record.

9 A. Lt. Dennis Gannon.

10 Q. Good morning. The time is now
11 10:14 a.m. My name is Wylie Stecklow. We're
12 in my office at 217 Centre Street. Sitting to
13 my right is Jon Avins, another attorney with
14 my office. Same to his right is Joseph
15 Sharkey, a video clerk who works with us.

16 In the room is the court reporter
17 whose name is --

18 COURT REPORTER: Elizabeth
19 Santamaria.

20 Q. -- Elizabeth Santamaria.

21 And then there are three attorneys
22 for Lt. Gannon, including Amy Robinson from
23 the City Law Department, Joni Forster-Galvin
24 and Carrie Talansky from the NYPD Legal
25 Bureau.

1 Gannon

2 Good morning, Lieutenant.

3 A. Good morning.

4 Q. I'm going to start off by going
5 through some of the basics of the deposition
6 and then get into more specifics.

7 Have you been deposed before?

8 A. Yes.

9 Q. How many times?

10 A. A few times. The exact number I
11 don't know. A few times.

12 Q. So you have some basics down, so
13 I'm going to try and get through them quickly
14 so we don't waste time on that.

15 A. Sure.

16 Q. As you know, you need to wait for
17 me to finish all my questions and answer
18 verbally so that the court reporter can take
19 your answers down. And if you don't
20 understand the question, you can let me know.
21 If you don't hear a question, you can let me
22 know. If I'm unclear to you in any way, you
23 can let me know, and if you don't know the
24 answer to my question you can let me know.

25 Is all of that clear?

1 Gannon

2 A. Yes.

3 Q. And agreed to?

4 A. Yes.

5 Q. If there's something that might
6 help you remember an answer to my question,
7 you can let me know. If there is any reason
8 you can't testify truthfully and accurately
9 here today?

10 (Reporter requested clarification.)

11 A. No.

12 Q. Have you consumed any drugs or
13 alcohol in the last 24 hours?

14 A. The last 24 hours?

15 Q. Yes.

16 A. No.

17 Q. Are you aware of any physical
18 condition that would affect your ability to
19 testify truthfully here today?

20 A. No.

21 Q. Are you aware of any mental
22 condition that would affect your ability to
23 testify truthfully and accurately here today?

24 A. No.

25 Q. Are you taking any medications that

1 Gannon

2 might affect your ability to testify
3 truthfully and accurately here today?

4 A. No.

5 Q. Are there any medications you
6 should be taking but you're not taking that
7 might affect your ability to testify
8 truthfully and accurately here today?

9 A. No.

10 Q. So is there any reason whatsoever
11 why you cannot testify truthfully and
12 accurately here today?

13 A. No.

14 Q. And you're also aware that you were
15 just sworn in, you're under oath and that's
16 the same type of oath you would be taking if
17 you were in a court of law?

18 A. Correct.

19 Q. And the oath is to tell the truth,
20 correct?

21 A. Correct.

22 Q. Okay. And that you understand that
23 after the deposition is over, some days in the
24 future you'll be given a copy of the
25 transcript and you will be given an

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opportunity to review it and make changes to it, correct?

A. Correct.

Q. And you understand if you do make changes to it I may be able to question you about those changes if we get to trial and you're called as a witness?

A. Correct.

Q. Okay. If I ask you a question and you know the answer because your recollection was refreshed by a document or recording, you need to let me know that when you are giving the answer. Is that understood?

A. Sure.

Q. As the deposition is going along if you remember an answer that you gave previously and you would like to change it, you can let me know and we can go back to that. Okay?

A. Okay.

Q. As you know, you're here today on behalf of the City of New York, correct?

A. Correct.

Q. And so when I refer to you in this

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deposition I'm referring to you in your capacity as a representative of the City of New York, unless I expressly say otherwise. Is that okay?

A. Sure.

Q. So, for example, if I ask whether you know or believe something I'm really asking you to testify on behalf of the City of New York.

A. Okay.

Q. So please note that in this deposition when I use the term "document" I mean any kind of recorded information including paper records, electronic documents, electronic information and database images and video unless I expressly say that I intend to use the word in a more narrow sense. Is that okay?

A. Yes.

Q. I may also use the phrase "documents and video" and when I do I intend to use the term "documents" in the broad sense I just explained. Is that okay?

A. Yes.

1 Gannon

2 Q. When I refer to the NYPD, I'm also
3 referring to the City of New York as a whole
4 unless I expressly say otherwise.

5 In other words, if I ask you
6 whether the NYPD has a particular kind of
7 policy, I expect you to let me know about any
8 such policy maintained by the NYPD or by the
9 City of New York. Is that okay?

10 A. Yes.

11 Q. And when I ask about the City of
12 New York, I will expect your answer to include
13 information concerning the NYPD. Is that
14 okay?

15 A. Sure.

16 Q. I'm going to review something we've
17 already gone over, but you're here to testify
18 on behalf of the City of New York, correct?

19 A. Correct.

20 Q. Your answers here will be sworn,
21 answers made on behalf of the City of New
22 York, correct?

23 A. Yes.

24 Q. Your answers in this deposition
25 will be binding on the City of New York in the

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same way that any witness testifying on their own behalf would be bound by their answers, correct?

A. Correct.

Q. Is there any way you believe the statement I just made is not correct?

A. No.

Q. I'm going to now ask you about your preparation and just be forewarned. I do not want to know about any specific communications you had with your counsel in answers to these questions.

A. Okay.

MS. ROBINSON: Wylie, one question. Can we go off the record?

MR. STECKLOW: Sure.

MS. ROBINSON: Just for a second.

(Discussion off the record.)

MR. STECKLOW: On the record.

Q. Do you agree that as a 30(B)(6) witness representing the City in this deposition you're under a duty to inform yourself as to the subject matter of the deposition?

1 Gannon

2 A. Yes.

3 Q. And do you believe you have
4 fulfilled that obligation?

5 A. Yes, to the best of my ability.

6 Q. Do you understand the subject
7 matter of this deposition?

8 A. I do.

9 MR. STECKLOW: Let's mark this as
10 Exhibit 1.

11 (Plaintiffs' Exhibit 1, multi-page
12 document, marked for identification, as of
13 this date.)

14 Q. I am handing you what has now been
15 marked as Exhibit 1. I ask you to review that
16 document and let me know if you are ready and
17 prepared to testify on each and every topic in
18 that document.

19 MR. STECKLOW: While he is doing
20 that, let's go off the record.

21 (Discussion off the record.)

22 MR. STECKLOW: We're back on the
23 record.

24 Q. Having reviewed Exhibit 1, are
25 there any topics on that -- within Exhibit 1

1 Gannon

2 that you're not prepared to testify to today?

3 A. Well, it depends on the question
4 you ask me. For example, I don't understand
5 what the term "non-City government" --
6 "non-City government entities," Paragraph 27,
7 on Page 4. Okay. Including -- the sentence
8 from Page 4, Paragraph 27, "including
9 nongovernment entities."

10 Q. Okay.

11 A. I don't know what that --
12 (Crosstalk.)

13 Q. Other than that --

14 A. But I assume you're questioning me.

15 Q. Other than that one phrase, is
16 there anything else within this five-page
17 document that you're unprepared to testify to
18 today?

19 A. I don't think so.

20 Q. Did you prepare in any way for this
21 deposition?

22 A. I met with Ms. Robinson prior to
23 coming here.

24 Q. When did you start preparing?

25 A. A couple of days ago. We met once

1 Gannon

2 or twice. Also met with Chief Sweet from the
3 Legal Bureau. Chief Sweet. S-W-E-E-T.

4 Q. So you communicate with
5 Ms. Robinson, you said, on two different
6 occasions?

7 A. Yes.

8 Q. And those were both within the last
9 week?

10 A. Yes.

11 Q. And were they in-person meetings or
12 phone call meetings?

13 A. In-person.

14 Q. And how long did they each last?
15 Let's start with the first one. How long did
16 that last?

17 A. Approximately four, five hours, I
18 would think.

19 Q. Okay. And how much time elapsed
20 between first meeting and the second meeting?

21 A. A full day, so it's a Wednesday.

22 Q. Wednesday and then a Friday?

23 A. Exactly.

24 Q. So it was Wednesday of last week
25 and then Friday of last week?

1 Gannon

2 A. Friday of this week.

3 Q. Today?

4 A. Today, this morning, and then

5 Wednesday -- yesterday was Thursday?

6 Wednesday.

7 Q. So you met with her the first time

8 this past Wednesday?

9 A. Correct.

10 Q. And then you met with her this

11 morning?

12 A. Correct.

13 Q. How long did you meet with her this

14 morning?

15 A. Two hours. There may have been one

16 other time, if I recollect. Maybe three times

17 the most.

18 Q. And was the third one also an

19 in-person meeting?

20 A. Yes. All the meetings were in

21 person.

22 Q. And was that within the last week

23 or was it prior to that?

24 A. It was last week, too.

25 Q. And how long was that meeting?

1 Gannon

2 A. A few hours.

3 Q. And that one preceded the Wednesday
4 meeting?

5 A. Yes.

6 Q. While meeting with Ms. Robinson,
7 did you look at any documents or video?

8 A. I saw a video of an event in the
9 Bronx.

10 Q. Is that the only video you
11 observed?

12 A. Yes.

13 Q. Okay. And did you look at any
14 documents?

15 A. I looked at -- I looked at one
16 document of a list of cases.

17 Q. And other than that one document
18 and list of cases, did you see any other
19 documents in preparation?

20 A. I looked at a detail request from
21 the Police Department.

22 Q. Was that for S17?

23 (Reporter requests clarification.)

24 Q. September 17, 2012 incident?

25 A. I don't know if that was for the

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Gannon

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anniversary date or itself. I don't recall at

3

the moment.

4

Q. Do you recall who the author of the
Detail Report was?

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A. No. It was a -- I think it was the
borough -- it was the Patrol Borough Manhattan
South Detail Request.

7

8

Q. Was it chief Purtell was the
author?

9

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A. It was probably from Chief
Purtell's shop. I don't know if he was the
author or not, but...

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Q. Other than the list of cases and
the Detail Report, were there any other
documents you reviewed during your preparation
for this deposition?

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A. I don't believe so.

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Q. So Exhibit 1 that you just
reviewed, you never saw that before today?

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A. I don't recall if I saw this before
or not. It took me a long time to read it so
I don't know.

19

20

Q. Okay. Is Chief Sweet an attorney
or not an attorney?

21

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23

1 Gannon

2 A. Well, he's a police chief. He
3 works -- he works in the Legal Bureau. I'm
4 not sure what his title is --

5 (Reporter requested clarification.)

6 I'm not sure if he is -- I think
7 he's a commanding officer of the Legal Bureau
8 now. I'm not sure.

9 Q. Do you know if he's an attorney?

10 A. I believe he is an attorney.

11 Q. Do you know if he communicated with
12 anyone who is not an attorney in preparation
13 for today's deposition?

14 A. No.

15 Q. No, you did not or no, you don't
16 know?

17 A. No. As far as everybody I spoke
18 to, was a lawyer.

19 Q. And that being Chief Sweet and
20 Ms. Robinson?

21 A. Correct.

22 Q. And there was nobody else that you
23 spoke with?

24 A. No.

25 Q. When you met with Chief Sweet, did

1 Gannon

2 you look at any documents or video?

3 A. No.

4 Q. How long did you meet with Chief
5 Sweet in preparation for today's deposition?

6 A. About two hours.

7 Q. In preparation for today's
8 deposition, did you review any of your own
9 documents, videos or files?

10 A. No.

11 Q. So in preparation for today's
12 deposition the only documents and videos that
13 you reviewed were the Bronx video?

14 A. Right.

15 Q. And the Detail Report and the list
16 of cases?

17 A. Correct.

18 Q. And nothing else was reviewed?

19 A. And maybe -- maybe this. I don't
20 remember. I don't remember if I reviewed this
21 Exhibit Number 1.

22 Q. Can you describe the efforts you
23 made to locate information relevant to this
24 deposition?

25 A. Repeat that.

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Gannon

Q. Can you describe the efforts you made to locate information relevant to today's deposition?

A. Other than speaking with Ms. Robinson, that was the extent of my efforts.

Q. So I'm going to go through a few subtopics. The answers are clearly going to be "no," but I'm going to put it on the record.

A. Sure.

Q. Okay?

So did you make any efforts to locate information relevant to today's deposition in the possession of employees of the City of New York?

(Reporter requests clarification.)

A. No.

Q. Did you make any efforts to locate information relevant to today's deposition in the custody of police units, such as precincts, borough officers, task forces, the Legal Bureau, other bureaus and divisions?

A. No.

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Gannon

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Q. Did you make any efforts to locate information relevant to today's deposition and database or electronic repositories?

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A. No.

6

7

Q. Just briefly I want to go through your NYPD history. When did you attend the academy?

8

9

A. I was hired January 21, 1985.

10

11

Q. And was that when you entered the academy or was that when you --

12

A. That's when I entered the academy.

13

14

Q. Okay. And so then you got assigned your first assignment sometime in July of '85?

15

16

A. Sometime -- yeah. Six months later, so I was assigned to a --

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It doesn't exist anymore, but I was assigned to a neighborhood stabilization unit which is kind of the transitioning to a precinct at that time. That's the way they used to do it.

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Q. Okay. And your rank at that point was PO?

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A. Police Officer.

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Q. And at what point were you moved

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Gannon

out of the neighborhood stabilization unit
into a precinct?

A. That would have been in 1986. The
exact date I don't recall.

Q. And where were you moved to?

A. The 9th Precinct.

Q. How long were you at the 9th for?

A. From 1986 until 1991.

Q. And were you ever promoted to
sergeant?

A. I was.

Q. And when was that?

A. That was in 1991.

Q. And when you were promoted to
sergeant were you transferred out of the 9th?

A. Yes.

Q. And where were you transferred to?

A. 13th Precinct.

Q. How long were you at the 13th for?

A. 1991 to 1998.

Q. Okay. And in 1998 were you
promoted again or transferred before promoted?

A. I was promoted.

Q. Promoted to lieutenant?

1 Gannon

2 A. To lieutenant.

3 Q. Okay. And where were you
4 transferred to?

5 A. Midtown North Precinct.

6 Q. And how long were you at Midtown
7 North for?

8 A. From '98 until 2000 -- 2002.

9 Q. Okay. And where were you
10 transferred to in 2002?

11 A. Patrol Borough Manhattan South.

12 Q. Okay. And how long were you at
13 PBMS for?

14 A. I was there for -- until 2004 so
15 2002 to 2004.

16 Q. And where were you transferred in
17 2004.

18 A. In 2004 I was transferred to the
19 Chief of Department's office.

20 Q. And who was the Chief of Department
21 at that time?

22 A. Chief of Department was Joseph
23 Esposito.

24 Q. And how long were you in the Chief
25 of Department office?

1 Gannon

2 A. His office, until -- 2004 until
3 2014 I believe it was. '13 or '14. I think
4 it was 2014.

5 Q. And is that when Chief Esposito
6 retired and went to OEM.

7 A. Correct. I stayed there a little
8 bit longer under Chief Banks, but -- but when
9 Chief Esposito became the Commissioner of
10 Emergency Management I was transferred over to
11 work for him.

12 Q. So is that your current assignment?

13 A. Correct.

14 Q. So you're an OEM?

15 A. Correct. New York City Emergency
16 Management.

17 Q. So are you a member of the NYPD
18 currently?

19 A. I am.

20 Q. And what is your current rank?

21 A. Lieutenant.

22 Q. Had you ever been promoted out of
23 lieutenant?

24 A. Out?

25 Q. Were you ever promoted to captain

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Gannon

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or --

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A. No.

4

Q. Okay.

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A. No.

6

Q. And who is your current supervisor?

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A. My current supervisor is Inspector

8

Andrew D'Amora. D-A-M-O-R-A.

9

Q. And what is your current position?

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A. I'm an aide to -- I'm an aide to

11

the commissioner basically, to make it simple.

12

Just to correct one thing. My rank

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officially is lieutenant special assignment,

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but I'm a lieutenant. It's a sub designation

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within lieutenant.

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(Reporter requests clarification.)

17

A. Right. It's not a captain rank.

18

Q. Okay. You previously testified

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that you looked at a list of prior incident

20

dates.

21

A. Correct.

22

Q. And one of them was in March of

23

2003, correct?

24

A. I didn't dedicate the dates to

25

memory.

1 Gannon

2 Q. Okay. There was an incident in
3 March of 2003 in front of a commercial
4 building where a company called The Carlyle
5 Group had an office. Did you do --

6 Are you familiar with the facts and
7 circumstances of that incident?

8 A. No.

9 Q. What did you do to prepare yourself
10 to answer questions about that incident?

11 A. Nothing.

12 Q. On March of 2003, in front of the
13 Carlyle building, there were people on two
14 sides of the sidewalk. Do you know which
15 sidewalk the people were on, what street that
16 was?

17 A. No.

18 MR. STECKLOW: Okay. We're going
19 to watch some video and I am going to ask
20 you some questions about it.

21 THE WITNESS: Okay.

22 MR. STECKLOW: Okay? So the video
23 is in a few different clips so we're not
24 going to watch the full clip of each
25 video because I just don't want to waste

1 Gannon

2 all of the time we have today. And so
3 we're are going to watch a few different
4 aspects of this, and this stuff has
5 obviously been turned over.

6 MS. ROBINSON: In Raganella
7 (phonetic) 1?

8 (Reporter requests clarification.)

9 MS. ROBINSON: I mean in Raganella
10 1? I mean in Raganella's -- 1, yes.

11 MR. STECKLOW: In the video. I
12 think it was turned over by Mr. Cooper
13 prior to that thumb drive being turned
14 over.

15 MS. ROBINSON: Okay. And do you
16 know what the Bates stamp is on it?

17 MR. STECKLOW: No, but we can
18 figure that out later without putting our
19 time into that now.

20 So, Joey, just get the video up and
21 let's show it to Lt. Gannon.

22 MR. SHARKEY: Sure.

23 MR. STECKLOW: And just as a heads
24 up, the video is from 2003. It was on
25 VHS when we got it and so we had to have

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Gannon

it converted to digital so it's not as smooth and clean as it would be otherwise.

We are going to watch the first bit of video here and I think this is just to show the setup of what was going on that day.

(Video played.)

MR. STECKLOW: So while watching this, I think the reason we're showing this and the next clip is to show that the sidewalk was not blocked. That people were able to traverse it.

The other side of the street there were people engaged in civil disobedience, which is what you're seeing now.

So we are going to watch more of the other side of the street where there was not civil disobedience.

(Video played.)

MR. STECKLOW: Okay.

MR. SHARKEY: One more time here.

(Video played.)

1 Gannon

2 Q. While he's checking that, in the
3 first two or three clips of video you could
4 see two sides of the street. On one side of
5 the street people were participating in civil
6 disobedience by sitting on the sidewalk and
7 the other side of the street people were
8 engaging in first amendment free speech by
9 standing with signs and chanting.

10 You can't hear the chanting as
11 there is no volume, but does that accurately
12 reflect what you were seeing in the video?

13 A. Well, yeah, partially. You could
14 see people standing on the sidewalk, I saw
15 people sitting down.

16 Q. On the sidewalk where people were
17 standing, could you see behind them there
18 was -- there were pedestrians traversing the
19 sidewalk?

20 A. I didn't see a lot of people going
21 back and forth. I was focusing on the people
22 standing up on the street up and down. It's
23 also a very limited view of what was going on.
24 I don't know if people were crossing around
25 those folks. I don't know what was happening

1 Gannon

2 without that being -- I don't know if there
3 were --

4 You know, people sometimes avoid
5 larger crowds of the people, you know, in
6 different ways. So I can't tell you if people
7 were being displaced --

8 (Reporter requests clarification.)

9 A. I'm sorry. I can't -- that
10 limited -- that limited view of it, I can't
11 tell whether people were going around the
12 demonstration. Sometimes people if they see
13 activity they'll -- they'll redirect around to
14 another area rather than going through the
15 people on the sidewalk. So I don't know.
16 It's very tough to tell.

17 Q. It's tough to tell whether the
18 people there on the sidewalk standing with
19 signs were blocking pedestrian traffic?

20 A. Correct.

21 Q. And so you couldn't tell from
22 watching the video if there was ability of
23 people to traverse the sidewalk behind those
24 protesting?

25 A. Correct.

1 Gannon

2 MR. STECKLOW: All right. So if we
3 can now watch, you'll see people -- those
4 same people standing there now getting
5 arrested. I am just trying to show you a
6 full story. That they were standing
7 there, they were protesting and then they
8 got arrested. Not this particular
9 arrest, but --

10 MR. SHARKEY: This is an old file.
11 I am just going to let this play out.

12 (Video played.)

13 MR. STECKLOW: I am going to stop
14 it right here for a second and you can
15 see that the time is 14:31.

16 A. 7:39?

17 Q. 7:39:02 on the video itself. I'm
18 asking from what you just saw and what you can
19 see here, does it look like there is
20 substantial blockage of the sidewalk?

21 A. Right there it looks like they're
22 blocking the sidewalk.

23 Q. It's sufficient to make arrests for
24 disorderly conduct?

25 A. I don't know what's happening

1 Gannon

2 outside the -- outside the shot. I also
3 wasn't there so it's very hard for me to
4 determine from this one snapshot in time
5 whether -- whether there was enough probable
6 cause to make arrests here or not.

7 Q. We're not -- Lieutenant, we're not
8 looking at this one snapshot in time. We're
9 looking at the video --

10 A. Right.

11 Q. -- that is fluid. I'm stopping it
12 here because I wanted you to tell me from what
13 you just saw, including what is stopped here,
14 whether there is substantial blockage of the
15 sidewalk to start making arrests for
16 disorderly conduct.

17 A. And I'll say it again. It's
18 difficult to determine whether -- whether or
19 not they're fully blocking the sidewalk or
20 not. What's going on outside the camera view,
21 I -- I -- it's -- you can't tell whether or
22 not. To me there it looks like they're --
23 they're blocking the sidewalk.

24 Q. Okay. And I'm not asking if
25 they're blocking the sidewalk. I am asking if

1 Gannon

2 there is substantial blockage sufficient to
3 satisfy disorderly conduct arrests.

4 A. I don't know. I don't know. I
5 can't determine from looking at that.

6 Q. I'm asking you to determine from
7 the video that you can see.

8 A. Right. Same answer.

9 Q. That you don't know?

10 A. Yeah. You can't determine that
11 from looking at this.

12 (Video played.)

13 Q. So from watching the video now, as
14 it's moving, you can't determine whether or
15 not there is substantial blockage sufficient
16 to satisfy disorderly conduct?

17 A. To me there it looks like people
18 are blocking the sidewalk.

19 Q. And I'm not asking if they're
20 blocking the sidewalk because that's not the
21 standard for disorderly conduct. Isn't that
22 correct?

23 A. Well, if they're -- if they're
24 obstructing pedestrian traffic on the
25 sidewalk, it could be probable cause to arrest

1 Gannon

2 people for disorderly conduct.

3 Q. So the standard, according to the
4 City of New York, is that blocking pedestrian
5 traffic is sufficient to arrest people for
6 disorderly conduct?

7 A. It could be. It could be. This,
8 it's -- I cannot determine that from looking
9 at this -- at this video. What they were
10 arrested for or what the -- what the
11 conditions were that these, the folks here
12 look like they're being arrested. I can't
13 tell you that.

14 Q. And you haven't watched this video
15 before, correct?

16 A. No.

17 Q. And you didn't do anything to
18 prepare for today's deposition to discuss the
19 incidents of this date in March of 2003,
20 correct?

21 A. Correct.

22 Q. Did you look at any information
23 related to a litigation entitled Kuntsler v.
24 City of New York?

25 (Reporter requests clarification.)

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A. No.

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Q. So you believe that the arrests made there were consistent with constitutional limits on police power, correct?

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A. I don't know why the -- I don't know what the determination was there to make the arrests. I don't know what their -- I don't know what the mindset was of the officers. I don't know what the situation was based on what they made the determination of probable cause for arrest. I don't know.

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Q. And prior to sitting here today and watching this video you did absolutely nothing to prepare to answer these questions about what happened that day and the police conduct, correct?

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A. Correct.

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Q. So do you know whether New York City did anything to avoid similar future arrests that may be inconsistent with constitutional limits on police power?

A. Repeat that.

Q. A lawsuit ensued from this case, from this arrest. Do you know that?

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A. Yes.

3

Q. Do you know that because --

4

A. I shouldn't say that. Because you just told me that, that's why.

6

Q. So because I just told you that you know a lawsuit ensued, but other than that you did not know a lawsuit came out of this arrest, correct?

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A. No. I've never seen that video before, so I don't know.

11

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Q. And you don't know anything about this incident, correct?

13

14

A. No.

15

Q. And so you don't know how the City of New York responded to this incident and the police conduct of that day, correct?

16

17

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A. Well, I would -- if it was a lawsuit, I would assume that the New York City Law Department handled the lawsuit.

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Q. But I'm not asking you about how they handled the lawsuit. I'm asking about the conduct of the police and how the City of New York responded to the conduct of police on that day. And I'm asking if you have any

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information about how the City of New York responded to the conduct of the police on that day.

A. I'm not sure -- I'm not sure I understand the question. I'm not sure I'm following what you're trying to determine.

Q. I'm trying to determine whether or not the City of New York made any response to how the police respond to sidewalk protests based on what happened on that day in March of 2003.

A. I don't know if any specific changes were made as a result of those arrests, no.

Q. Do you believe that those arrests were consistent with the constitutional limits on police power?

A. I don't know. I don't know what their mindset was to make the arrest.

Q. Do you believe in that situation, from the video you were watching, that the police needed to provide dispersal orders before they can make arrests?

A. I don't know. There was no audio.

1 Gannon

2 I don't know if dispersal orders were given or
3 not. I don't -- I don't know.

4 Q. My question was whether or not you
5 believed dispersal orders were required before
6 those arrests could be made.

7 A. I don't know what the circumstances
8 were. I don't know why they arrested those
9 folks or what their determination was, why
10 they made the arrests. So I don't know.

11 Q. Did the NYPD policing of this
12 sidewalk protest on that day in 2003 indicate
13 to the City of New York that the NYPD
14 procedures regarding policing of sidewalk
15 protest were sufficient to comply with
16 constitutional limits on police power?

17 MS. ROBINSON: Objection. You can
18 answer.

19 A. Read it to me one more time. What
20 is your first name?

21 Q. Wylie.

22 A. Wylie. Wylie, could you read that
23 one more time?

24 Q. I can. Did NYPD policing of the
25 sidewalk protest in March of 2003 indicate to

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the City of New York that the NYPD procedures regarding policing of sidewalk protest were sufficient to comply with constitutional limits on police power?

A. I don't know.

Q. Did the City of New York review the procedures utilized by the NYPD in policing the sidewalk protests of April of 2003 regarding constitutional limits on police power?

A. I don't know.

Q. Did the City of New York consider whether the procedures utilized by the NYPD in policing the sidewalk protest needed to be reviewed based on the events of that day?

A. I don't know.

Q. Did the City of New York consider whether the procedures utilized by the NYPD in policing the sidewalk protest --

(Reporter requests clarification.)

Q. Did the City of New York consider whether the procedures utilized by the NYPD in policing sidewalk protests needed to be changed based on the events of that day?

1 Gannon

2 A. I don't know.

3 Q. Can you identify any changes
4 implemented by the City of New York to ensure
5 the NYPD policing of sidewalk protests would
6 be consistent with constitutional limits on
7 police power as set forth by the New York
8 State Court of Appeals in the People v. Jones
9 decision that was issued in November of 2007?

10 MS. ROBINSON: Objection. Calls
11 for a legal conclusion. You can answer.

12 A. I don't know.

13 Q. I'm asking for a "yes" or "no"
14 question (sic). I'm not asking to identify
15 the specifics. I'm asking whether you can.

16 A. Wylie --

17 Q. I'll repeat it to you.

18 A. Do you mind if I call you Wylie?

19 Q. I have no problem. Thank you.

20 Please identify any changes
21 implemented by the City of New York to ensure
22 the NYPD policing of sidewalk protest would be
23 consistent with constitutional limits on
24 police power as set forth by the New York
25 State Court of Appeals decision in People v.

1 Gannon

2 Jones issued in November of 2007.

3 MS. ROBINSON: Objection. Calls
4 for a legal conclusion. You can answer.

5 A. I don't know how to answer that
6 question. I don't know.

7 Q. Can you identify any changes
8 implemented by the City of New York to ensure
9 the NYPD policing of sidewalk protests would
10 be consistent with constitutional limits on
11 police power as set forth by the New York
12 State Court of Appeals decision in the People
13 v. Jones opinion issued November of 2007?

14 MS. ROBINSON: Same objection.

15 A. No.

16 Q. Are you familiar with the People v.
17 Jones decision in 2007?

18 A. No.

19 MR. STECKLOW: Off the record for a
20 second.

21 (Discussion off the record.)

22 MR. STECKLOW: Back on the record.

23 Q. Can you identify any instructions
24 issued to supervisors or commanders in the
25 field to ensure that NYPD policing of sidewalk

1 Gannon

2 protest during Occupy Wall Street would be
3 consistent with constitutional limits on
4 police power as set forth by the New York
5 State Court of Appeals in the People v. Jones
6 decision from November 2007?

7 MS. ROBINSON: Objection. Calls
8 for a legal conclusion. You can answer.

9 A. No.

10 Q. Can you identify any other
11 instructions issued to members of the service
12 to ensure that NYPD policing of sidewalk
13 protest during Occupy Wall Street would be
14 consistent with the constitutional limits of
15 police power as set forth by the New York
16 State Court of Appeals decision in People v.
17 Jones issued in November of 2007?

18 MS. ROBINSON: Objection. Outside
19 the scope. You can answer.

20 A. I can answer? No.

21 Q. Can you identify how the City of
22 New York sought to ensure compliance with
23 constitutional limits on police power as set
24 forth by the New York State Court of Appeals
25 in the People v. Jones decision during Occupy

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Wall Street?

MS. ROBINSON: Objection. Outside
the scope.

A. No.

MR. STECKLOW: Off the record for a
second.

(Discussion off the record.)

MR. STECKLOW: Back on the record.

Q. Can you identify whether the City
of New York measured compliance constitutional
limits on police power as set forth by the New
York State Court of Appeals decision in People
v. Jones issued in November 2007 during the
Occupy Wall Street movement?

MS. ROBINSON: Objection. Outside
the scope.

A. No.

Q. Can you identify whether the City
of New York monitored compliance with
constitutional limits on police power at set
forth by the New York State Court of Appeals
decision in People v. Jones during Occupy Wall
Street?

MS. ROBINSON: Same objection.

1 Gannon

2 A. No, I cannot.

3 Q. Can you identify any instructions
4 issued to supervisors or commanders in the
5 field to ensure that NYPD policing of sidewalk
6 protest during the one-year anniversary
7 celebration of Occupy Wall Street would be
8 consistent with constitutional limits on
9 police power as set forth by the New York
10 State Court of Appeals decision in People v.
11 Jones issued in November of 2007?

12 MS. ROBINSON: Same objection. You
13 can answer.

14 A. No.

15 Q. Can you identify whether any
16 instructions issued to the members of the
17 service to ensure NYPD policing of sidewalk
18 protest during the one-year anniversary
19 celebration of Occupy Wall Street would be
20 consistent with the constitutional limits on
21 police power as set forth by the New York
22 State Court of Appeals in the People v. Jones
23 decision issued in November 2007?

24 MS. ROBINSON: Same objection. You
25 can answer.

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A. No.

Q. Can you identify whether the City of New York ensured compliance with constitutional limits of police power as set forth by the New York State Court of Appeals decision in People v. Jones during the one-year anniversary of Occupy Wall Street?

MS. ROBINSON: Same objection.

A. No.

Q. Can you identify how the City of New York measured compliance with constitutional limits on police power as set forth by the New York State Court of Appeals in the People v. Jones decision during the one-year anniversary?

MS. ROBINSON: Same objection.

A. No.

Q. Can you identify whether the City of New York monitored compliance with constitutional limits on police power as set forth by the New York State Court of Appeals in the People v. Jones decision during the one-year anniversary of Occupy Wall Street?

MS. ROBINSON: Same objection.

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A. No.

MR. STECKLOW: Go off the record
for a second.

(Discussion off the record.)

MR. STECKLOW: Back on the record.

Q. Can you identify how or whether the
City of New York measured compliance with
constitutional limits on police power as set
forth by the New York State Court of Appeals
decision in People v. Jones during the
one-year anniversary of Occupy Wall Street?

MS. ROBINSON: Same objection.

A. No.

Q. What were the NYPD policies or
practices, if any, with respect to monitoring
newspaper articles, press reports, legislative
testimony and/or other similar types of
discourse for complaints about NYPD exceeding
constitutional limits on power?

MS. ROBINSON: Objection to form.

A. Read that to me one more time.

Q. Sure. If you want to look at topic
11, I am pretty much reading that
word-for-word.

1 Gannon

2 What were the NYPD policies or
3 practices, if any, with respect to monitoring
4 newspapers articles, press reports,
5 legislative testimony and/or other similar
6 types of discourse for complaints about NYPD
7 exceeding constitutional limits on power?

8 And for the record, topic 11 was
9 from Exhibit 1 that you were looking at,
10 correct?

11 A. Yes. Correct.

12 Well, the deputy commissioner for
13 public information, shorthand will be DCPI,
14 Deputy Commissioner for Public Information,
15 they on a daily basis put out newspaper
16 clippings for dissemination. So that --
17 that's how they would monitor, I guess, print
18 reports or stuff like. Whether it's -- not
19 just specifically for -- the last part of your
20 question was about --

21 Read your question again, Wylie,
22 just the last part.

23 Q. What were the NYPD policies or
24 practices, if any, with respect to monitoring
25 newspaper articles, press reports, legislative

1 Gannon

2 testimony and/or other similar types of
3 discourse for complaints about NYPD exceeding
4 constitutional limits on power?

5 MS. ROBINSON: Objection to form.

6 A. DC -- DCPI puts out press
7 clippings, not just limited to --

8 You read it to me three times. I
9 can't remember the term you're using for --

10 Q. Isn't it there?

11 A. No, I don't think so. It just says
12 other than -- what I'm reading here in the
13 umbrella, it says, "What were the NYPD's
14 policies and practices, if any, with respect
15 to monitoring newspaper articles, press
16 reports, legislative testimony and other
17 similar types of discourse." Yours has --
18 your has a different quality to it, but --

19 Q. For complaints about NYPD exceeding
20 constitutional limits on power.

21 A. Right. Mine doesn't have that last
22 section.

23 Q. Okay.

24 A. But DCPI, to put my point on it
25 anyway, our press people put out clippings,

1 Gannon

2 daily clippings of newspaper reports but not
3 just specific -- pretty much anything that
4 appears in the newspaper about the Police
5 Department they'll put it out so people can
6 have one central location for, you know,
7 reading what was in the paper that day or
8 newspapers or any kind of article. Not just
9 limited to newspapers.

10 Q. It's --

11 A. That's -- that's basically what
12 that -- the answer to number 11 would be.
13 And, again, your question was different from
14 Exhibit 1 that I have here. Just a little bit
15 different.

16 Q. I just added on the reference of
17 what they were monitoring for. Monitoring the
18 complaints -- for complaints about NYPD
19 exceeding constitutional limits on power.

20 A. Correct. That's the difference.

21 Q. And your answer --

22 MS. ROBINSON: Objection.

23 Q. Okay. Your answer explained that
24 DCPI monitors press for mentions of the Police
25 Department and then shares that?

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Gannon

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A. Correct.

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Q. And who do they share that with?

4

A. Well, they share it with --

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nowadays with technology the way it is, Police

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Officers can get that information on their

7

smart phones. It's shared on our internal

8

intranet page, the internal Police Department

9

system, and it's, you know, it's the clippings

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of the day's, you know, reports.

11

Q. And if there is a complaint that's

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found within the press clippings, is that --

13

does that trigger some sort of investigation,

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response or anything or is it simply just part

15

of a DCPI collection of stories?

16

A. It could generate a complaint. I

17

think the DCPI's main function there is to

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put -- collate the press reports from

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different sources, whatever, and then put it

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out so that everybody could be aware of what

21

was in the papers that day. I keep saying

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papers, but in the general discourse I guess

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you want to put it generically, that day.

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Q. So that was their policy about how

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they monitor. Now I'm asking about what they

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do once they find something raised. How do they respond? Do they respond?

Do they send it to the Chief of Department for an investigation? Do they send it to IAP for an investigation? Does anything occur upon DCPI finding mentions of complaints of NYPD exceeding constitutional limits on power?

A. News reports, DCPI I don't think would do that. If we got an complaint, it would be -- if a complaint -- complaint about something like that came into the department, then depending on the nature of the complaint, that would be -- that could be investigated or referred to someone else depending on what the nature of the complaint was.

That happens pretty regularly, if someone were to contact the Police Department and make a complaint. Depending on the nature of the complaint then that would be handled in, you know, there will be -- the complaint will be forwarded and handled as required, depending on what the nature of the complaint was.

1 Gannon

2 Q. Okay. So I'm going to ask the more
3 specific question. You may have already
4 answered it, but I want to get a more specific
5 answer.

6 What were the NYPD policies or
7 practices, if any, with respect to responding
8 to a specific complaints about NYPD exceeding
9 constitutional limits on power from a citizen?

10 A. Well, if you had a complaint
11 about -- for example, if you had a complaint
12 about misconduct, that might be -- if that came
13 into the Police Department, that might be
14 forwarded over to the Internal Affairs Bureau.
15 If you had a complaint from -- it depends on
16 the nature of the complaint. But if you had
17 other complaints about a Police Officer of how
18 the way things were handled, that would
19 probably come to the Chief of Department's
20 office and that might be funneled out to if it
21 was in a certain area.

22 For example, this demonstration
23 that we just watched the video. This is just
24 an example, not specific to the video. That
25 occurred in Manhattan South. So that probably

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the Chief of Department handled it down to --

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in the form of communication down to Manhattan

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South and then they would handle the

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communication and conduct an investigation as

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to what happened. So it depends on the nature

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of the complaint.

8

Q. Does it depend on whose making the

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complaint?

10

A. No.

11

Q. So it's the same response whether

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it's a complaint from a citizen, whether it's

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from an elected official, whether it's from an

14

advocacy group?

15

A. Right. Correct. I mean it

16

doesn't -- all the complaints that come in are

17

handled in a similar fashion.

18

Q. So when a complaint comes in and,

19

say, it's sent directly to the commissioner --

20

A. Right.

21

Q. -- can you go through and tell me

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how they determine what to do with it, where

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to send it and how it's investigated, if it's

24

investigated?

25

A. It really greatly depends on what

1 Gannon

2 the nature of the complaint is. So the
3 easiest one to do is if there was a report of
4 misconduct by a Police Officer, serious
5 misconduct, that will go to the Internal
6 Affairs Bureau.

7 So if it came into the
8 Commissioner's office they would treat it as a
9 communication. They would determine what the
10 best -- who would be the best person or unit
11 or entity to -- to look into it. In this
12 case, serious misconduct so we'll stick with
13 that theme, that would come down to the
14 Internal Affairs Bureau and then they would --
15 they would conduct the investigation.

16 Q. Can you give me the answer if the
17 complaint was about NYPD exceeding
18 constitutional limits on power regarding
19 sidewalk protest?

20 A. That may go to -- that could go to
21 the Legal Bureau, that could go to -- I mean
22 it really depends on if it was -- if it was --

23 It's hard to answer with such a
24 broad topic, you know? Something like that
25 might be -- it might go to the Legal Bureau to

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take a look at. It really depends on the
3 specificity of it.

4

Q. How is that determination made? If
5 something is sent to the commissioner --

6

A. Right.

7

Q. -- what happens at that point for a
8 determination to be made about where it goes?

9

A. Someone on the Commissioner's
10 staff, I can't tell you who it is, but someone
11 on the Commissioner's staff goes through these
12 letters or receipts of complaints and then
13 they, you know, they sit there and determine,
14 based on previous examples, based on their
15 experience, based on sometimes it's obvious,
16 sometimes it's less than obvious and then
17 they'll direct this communication out to the
18 people who they think would handle it best.

19

Q. And for complaints about NYPD
20 exceeding constitutional limits on power
21 regarding sidewalk protest, are you unsure
22 where they would go or you're saying they
23 would go to the Legal Bureau?

24

A. It could go to the legal bureau.

25

It could go to -- it could go to the local

1 Gannon

2 command. We'll stick with the theme here.
3 Like Patrol Bureau Manhattan South, if they
4 had -- if they had -- if the protest was
5 effected in a particular command, then they
6 may refer it to the borough commander in that
7 particular command. It really depends on the
8 specificity of the complaint.

9 Q. So I'm asking for specific
10 understanding of how the NYPD responds to this
11 and I'd like to know, if you have that answer,
12 what I don't want is speculation about what
13 might happen. I'd really like to understand
14 if a complaint comes in, a specific complaint
15 that the NYPD exceeded their constitutional
16 limits on power at a sidewalk protest, do you
17 know how that is handled, where it goes
18 specifically and how it's investigated?

19 A. Well, that's a broad subject
20 matter. So it really -- it really would
21 depend. There's no, you know, there's no box
22 to check there. It's -- it's --

23 Likelihood I think it would go to
24 the legal bureau, but if it mentions some
25 specific officer who did it, it may be farmed

1 Gannon

2 out to the -- farmed out -- it may be
3 transferred over to the local patrol borough
4 where that officer works. It just depends on
5 the nature of the complaint.

6 In this thing, you mention this
7 topic, it's rather broad. In this example
8 it's broad so it's hard to determine where
9 exactly it would go.

10 Q. Is there a policy or practice in
11 place with the NYPD in order to make that
12 determination?

13 A. Not to my knowledge.

14 MR. STECKLOW: Let's mark this as
15 Exhibit 2.

16 (Plaintiffs' Exhibit 2, two-page
17 letter dated April 28, 2003, marked for
18 identification, as of this date.)

19 Q. So what I've handed you are three
20 separate letters from the New York Civil
21 Liberties Union to the commissioner of the
22 NYPD. One is dated April 28, 2003; one is
23 dated August 30, 2005; one is dated October 20
24 of 2011. Each one of them the NYCLU makes
25 complaints about police exceeding

1 Gannon

2 constitutional limits on power and makes
3 specific examples about sidewalk protest.

4 How would each of these specific
5 complaints be handled by the NYPD?

6 A. Give me a second to just review
7 this.

8 MS. ROBINSON: Have these been
9 disclosed? I don't see Bates stamp
10 numbers.

11 MR. STECKLOW: I believe they all
12 have all been disclosed.

13 MS. ROBINSON: Can you tell me what
14 the Bates stamp numbers are?

15 MR. STECKLOW: No.

16 MS. ROBINSON: We're not going to
17 continue this deposition with you handing
18 us things at the last minute.

19 MR. STECKLOW: I'm not handing you
20 things at the last minute. Yesterday I
21 sent you video that we found and I
22 haven't shown that yet because you made
23 an objection to it even though the
24 City --

25 MS. ROBINSON: And I'm making an

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objection to this because it's not Bates stamped.

MR. STECKLOW: If it's not Bates stamped doesn't mean it hasn't been produced.

MS. ROBINSON: Well, you don't know if it's been produced.

MR. STECKLOW: I'm telling you I believe it's all been produced.

MS. ROBINSON: Believing it and knowing it are two different things. If it has been produced then you should provide the Bates stamp numbers.

MR. STECKLOW: I'm representing to you that I believe this has all been produced. We are not asking specifically about -- we are not asking about how these things are handled. I've been told that it's too general of a question so now I'm trying to be more specific.

MS. ROBINSON: I understand that, but there is no indication that these documents have been produced in this case. To the extent --

1 Gannon

2 MR. STECKLOW: The indication is
3 that I'm telling you that I believe they
4 have been produced.

5 MS. ROBINSON: You're saying you
6 believe. I want to know that you know
7 that they have been produced. I don't
8 want to go through this deposition
9 constantly seeing things that aren't
10 marked --

11 MR. STECKLOW: You're going to
12 see --

13 MS. ROBINSON: Such as the video.

14 MR. STECKLOW: You're going to see
15 things that aren't marked. It doesn't
16 matter. These things were all --

17 MS. ROBINSON: It does matter.

18 MR. STECKLOW: The things that
19 haven't been produced, I'd let you know.

20 MS. ROBINSON: You don't know that
21 this has been produced.

22 Q. Let's look at this third document.
23 this one has 1,000 percent been produced by
24 the City of New York. Okay? Rip off the
25 first page. Let's look at the third document.

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Gannon

2

A. Is that the one dated October 20,

3

2011.

4

Q. It is.

5

A. Addressed to Raymond Kelly,

6

Commissioner of New York City Police

7

Department.

8

(Witness reviewing document.)

9

A. I'm almost done. Thank you.

10

Q. Looking at the second page, the

11

second to last paragraph, it states there that

12

quote, "On a related point we also have been

13

present at several locations (including two

14

this past weekend) where Police Officers

15

aggressively dispersed people standing

16

lawfully on city sidewalks. While we

17

recognize that such dispersal orders can be

18

appropriate in limited circumstances, we urge

19

the department to be more careful with such

20

orders."

21

What, if anything, would the NYPD

22

do in response to this written complaint being

23

sent to the commissioner of New York Police

24

Department?

25

A. Mr. Dunn didn't specify --

1 Gannon

2 (Reporter requests clarification.)

3 A. The letter is written by or signed
4 by Christopher Dunn. He's the Assistant Legal
5 Director for the New York City Liberties
6 Union.

7 Unfortunately, he didn't state
8 where this occurred so I don't know where this
9 would have been forwarded to as -- to be -- to
10 be further looked at. It's hard to tell.
11 Mr. Dunn didn't specifically say.

12 So I can't answer directly what --
13 where they would have sent this because it
14 lacks specificity.

15 Q. Does the NYPD have any rules in
16 place about how to handle complaints such as
17 these?

18 MS. ROBINSON: Objection. You can
19 answer.

20 A. Yes.

21 Q. Are those rules written down?

22 A. Yes.

23 Q. Where are they written down?

24 A. The handling of communications
25 would be in the New York City -- the Police

1

Gannon

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Department's administrative guide. How
communications are handled, that would fit the
bill here.

5

Q. So a complaint is considered a
communication by the NYPD?

7

A. It would be handled as a
communication. So a complaint came in. The
process I described earlier. You mentioned if
a complaint came into the commissioner's
office, the Police Commissioner's office, how
would it be handled? Somebody in the
commissioner's office would determine where it
would go and it would be sent down in the form
of a communication to the appropriate person.

16

Q. And who in the commissioner's
office makes that determination?

18

A. That I don't know. A member of his
staff.

20

Q. What factors do they use to make a
determination about where it would go?

22

A. Based on their experience.
Sometimes it's obvious. Again, serious
misconduct would be directed over to the
Internal Affairs Bureau.

25

1 Gannon

2 Other topics, Mr. Dunn praised our
3 response earlier on which -- which was nice of
4 him. I don't know where he forwarded the good
5 news. But other than that, that would be --
6 the determination would be based on the
7 experience of the person doing it and, you
8 know, like you got serious misconduct, just as
9 an example because we talked about that, that
10 would go to internal affairs.

11 Q. You talked about that. I'm trying
12 to talk about sidewalk protests.

13 A. Right.

14 Q. So specifically about the sidewalk
15 protest.

16 A. Right.

17 Q. What criteria does NYPD use to
18 determine how to handle a complaint such as
19 the one we're looking at in Exhibit 2?

20 A. In this particular example it would
21 be difficult to forward this anywhere because
22 he doesn't say where it happened. So, I don't
23 know. I mean it's...

24 Q. There was another date on the list
25 of dates you were shown, of August 31, 2004.

1 Gannon

2 Are you familiar with the facts and
3 circumstances of an incident that occurred on
4 Fulton Street on that day during the
5 Republican National Convention?

6 A. I don't know.

7 Q. What would you need to do to find
8 whether or not you are familiar with the facts
9 and circumstances of that incident?

10 MS. ROBINSON: Objection. Outside
11 the scope. You can answer.

12 A. I don't know what you're referring
13 to, so I don't know. I don't know what you
14 could do to refresh my memory. I'm not
15 familiar with that.

16 Q. You looked at a list of dates that
17 your attorney provided you for incidents.

18 A. Correct.

19 Q. This is one of those dates.

20 A. Correct.

21 Q. August 31, 2004 at Fulton Street as
22 part of the republican National Convention,
23 did you do anything to prepare yourself for
24 today's deposition in relation to that
25 incident?

1 Gannon

2 A. No.

3 MS. ROBINSON: Objection. Outside
4 the scope.

5 MR. STECKLOW: How is it outside
6 the scope?

7 MS. ROBINSON: I gave him a list of
8 settled lawsuits in which the court
9 stated that the appropriate question to
10 be asked about Exhibit D2 was whether the
11 NYPD did anything in response to these
12 filed complaints.

13 MR. STECKLOW: I don't agree with
14 that.

15 MS. ROBINSON: Not about facts and
16 circumstances.

17 MR. STECKLOW: Okay. I don't agree
18 with that.

19 MS. ROBINSON: Well, it's what --
20 it's in the order.

21 Q. All right. Did you -- so you
22 didn't review any -- any information
23 concerning the arrests of August 31, 2004 at
24 the Fulton Street area, correct?

25 A. No. Correct, yes. That's correct.

1 Gannon

2 I did not review it.

3 Q. Do you know whether or not the
4 arrests were consistent with the
5 constitutional limits on police power?

6 MS. ROBINSON: Objection. Outside
7 the scope.

8 A. I don't know.

9 Q. Do you know what, if anything, the
10 City of New York did to avoid similar future
11 arrests?

12 A. I don't know.

13 Q. Can you identify any changes taken
14 as a result of a lawsuit that was resolved
15 regarding that arrest date?

16 A. Changes as a result of -- as a --
17 drafting of a lawsuit? Sorry.

18 Q. Can you identify any changes taken
19 as a result of the lawsuit that was settled
20 for the people arrested that day, August 31,
21 2004, on Fulton Street?

22 A. I don't know.

23 Q. We're looking for a "yes" or "no"
24 answer here.

25 A. Okay.

1 Gannon

2 Q. And it's whether you can identify
3 them. So if you cannot it's not that I don't
4 know. It's that you can't identify them. So
5 that's hopefully the answer we can get to so
6 we can move through this?

7 A. Okay.

8 Q. So can you identify any changes
9 taken by the NYPD as a result of the lawsuit
10 filed for the people arrested on August 31,
11 2004?

12 A. I cannot identify that.

13 THE WITNESS: Can we go off the
14 record for a second?

15 MR. STECKLOW: Sure.

16 (Discussion off the record.)

17 MR. STECKLOW: The time is now
18 11:28 and we are going to take a
19 five-minute break.

20 THE WITNESS: Thank you.

21 MR. STECKLOW: Sure.

22 (Recess taken.)

23 MR. STECKLOW: The time is now
24 11:44. We are still in my office at it
25 217 Centre Street, at the continued

1 Gannon

2 deposition of Lt. Gannon.

3 All right. We are now going to
4 mark this as Exhibit 3, please.

5 (Plaintiffs' Exhibit 3, one-page
6 document, marked for identification, as of
7 this date.)

8 MR. STECKLOW: Off the record.

9 (Discussion off the record.)

10 Q. Have you seen this document before,
11 Lieutenant?

12 A. Yes, I have.

13 Q. And is this a document -- one of
14 the two documents that Ms. Robinson showed
15 you?

16 A. Yes.

17 MS. ROBINSON: Objection. You can
18 answer.

19 A. Yes.

20 Q. I am now asking you about topic
21 number 5. Topic number 5 has, I believe, four
22 various locations on it. The date on topic
23 number 5 is 8/31/04 and the first location is
24 Fulton Street. And the questions I have been
25 asking you prior to the break were about the

1 Gannon

2 Fulton Street address. Are you familiar with
3 the Fulton Street arrest?

4 A. No.

5 Q. Can you testify as to whether the
6 City of New York did anything to avoid similar
7 future arrests after the Fulton Street
8 incident?

9 A. My understanding is that the cases
10 on this sheet, Exhibit Number 3, have all
11 been -- have all been adjudicated in some
12 fashion. So I mean the NYPD doesn't --
13 doesn't make policy changes based on filed
14 lawsuits.

15 So the specific Fulton Street one I
16 don't know, but I can tell as a general
17 thought that the NYPD wouldn't make policy
18 changes based on filed lawsuits.

19 Q. Is that your answer?

20 A. Yes.

21 Q. Just to be clear. You recall in
22 the beginning when we went through
23 instructions we talked about the "City of New
24 York" and "NYPD" being terms that we were
25 going to use as one entity?

1 Gannon

2 A. Yes.

3 Q. And so does your answer when you
4 were using the term "NYPD" follow that where
5 you are talking about both the City of New
6 York when you say the words "NYPD"?

7 A. Well, the City of New York here
8 is -- the Law Department for New York City --
9 New York City Law, they're the one who handled
10 all the legal cases. The NYPD doesn't get
11 involved in litigation, other than, you know,
12 usual stuff. Witnesses or documents or stuff
13 like that. So what I -- when I was talking
14 about this, City of New York here would be the
15 law department handles all litigation part of
16 this for the Police Department.

17 Q. But you're not here on behalf of
18 the Law Department. You're here on behalf of
19 the City of New York, correct?

20 A. Yes.

21 Q. And we went through that at the
22 beginning of this deposition, correct?

23 A. Correct.

24 Q. So I'm asking you, the answer you
25 just gave and you used the determine "NYPD"

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Gannon

and I want to make sure that you were using that term to mean the City of New York as a whole as well as the one entity, one agency underneath it, the NYPD.

A. Yes.

MS. ROBINSON: Objection. If the New York City Law Department falls under the City does one thing and the NYPD does another thing, it can't be an umbrella. He specifically has answered what the NYPD does and what the Law Department does. You can't lump the NYPD and New York City in one answer with respect to that question.

Q. Do you want to change your answer based on the objection your counsel just made?

MS. ROBINSON: He answered it.

MR. STECKLOW: He gave me a yes. I'm giving him an opportunity to change his answer if he would like to. Otherwise, the answer will stay.

MS. ROBINSON: If you could restate the question.

MR. STECKLOW: I'm talking to the

1 Gannon

2 witness, Amy. I let you just do a very
3 long speaking objection and didn't say
4 anything about it. I'm asking the
5 witness if his answer is changing and if
6 the answer is no, it's not changing,
7 great. If the answer is yes, it's
8 changing, then I'll hear it. If's that's
9 not the response I'm going to get, then
10 that's not the response I'm going to get.

11 A. I understand in the beginning we
12 talked about the City of New York and the
13 NYPD. When I answered the question, NYPD I
14 was answering it as the City of New York is
15 the person who handles the Law Department.
16 The City of New York handles the litigation
17 for the filed lawsuits. The NYPD being, you
18 know, the person -- the entity being sued. So
19 I split those two when I answered that
20 question.

21 Q. So how -- would the City of New
22 York make changes to NYPD policy based on
23 facts alleged in settled lawsuits?

24 A. I don't -- now I will stick with my
25 previous answer, which was the NYPD doesn't

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Gannon

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make policy changes based on -- based on filed lawsuits. I'm not sure how else to answer the question.

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Q. My question was about the City of New York and since you're now, I believe, testifying that you're not grouping those together --

9

A. Right.

10

11

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13

Q. -- and you know our instructions in the beginning were we were going to group those together. I'm now asking you about the City of New York, not NYPD.

14

15

16

Does the City of New York make changes to NYPD policy based on facts alleged in settled lawsuits?

17

A. No.

18

19

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Q. Does the City of New York make changes to NYPD practice based on facts alleged in settled lawsuits?

21

22

A. The City -- well -- I don't know how to answer that question.

23

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The NYPD wouldn't make changes based on filed lawsuits. I mean it would make changes based on changes in the legislation,

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Gannon

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and changes in, you know, controlling law.

3

But it wouldn't necessarily be made because of
4 filed lawsuits.

5

6

Q. Does the NYPD make changes to its
practices based on the facts alleged in
7 settled lawsuits?

8

A. I'm sorry. Does the NYPD --

9

10

Q. -- make changes to its practices
based on the facts alleged in settled
11 lawsuits?

12

A. No.

13

14

Q. Did the NYPD policing a sidewalk
protest on August 31, 2004 during the Fulton
15 Street arrest indicate to the City of New York
16 that the NYPD procedures regarding police in a
17 sidewalk protest were sufficient to comply
18 with constitutional limits on police power?

19

20

MS. ROBINSON: Objection. You can
answer if you understand.

21

A. I don't understand.

22

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Q. Do you know whether the NYPD
policing of the sidewalk protest of the Fulton
Street August 31, 2004 date indicated that the
City of New York, that the NYPD procedures

1 Gannon

2 regarding policing of sidewalk protests were
3 sufficient to comply constitutional limits on
4 police power?

5 MS. ROBINSON: Objection. You can
6 answer.

7 A. I don't know.

8 Q. Do you know whether the City of New
9 York reviewed the procedures utilized by the
10 NYPD in policing the Fulton Street sidewalk
11 protest on August 31, 2004 regarding
12 constitutional limits on police power?

13 MS. ROBINSON: Objection. Outside
14 the scope.

15 Q. You can answer.

16 A. Oh.

17 MS. ROBINSON: Sorry.

18 A. I don't know.

19 Q. Just as an instruction. Unless
20 your attorney says "Do not answer" --

21 A. Okay.

22 Q. The objection is for the record and
23 you can answer?

24 A. That's fine. I just wasn't sure.

25 Q. Did the City of New York -- excuse

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Gannon

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me. Can you identify whether the City of New York considered the procedures utilized by the NYPD in policing the sidewalk protest of August 31, 2004 was in need of review based on those events?

6

7

A. No.

8

Q. Do you know whether the City of New York considered whether the procedures utilized by the NYPD in policing that sidewalk protest of August 31, 2004 needed to be changed based on the policing of that date?

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A. As a result of the litigation I mentioned that we don't -- we wouldn't change the policies or procedures based on the filed litigation. So I don't know if that answers that question previously, but it's -- it's -- I would say no.

19

20

21

Q. You are aware that a lawsuit ensued regarding these arrests of August 31, 2004, Fulton Street, correct?

22

A. Correct.

23

24

25

Q. Are you aware that the plaintiffs won summary judgment on false arrest based on the arrest on the sidewalk on August 31, 2004?

1 Gannon

2 A. I know the cases were -- I know the
3 cases were settled. I don't know what the
4 reason was for them settling.

5 Q. So you're not aware that a federal
6 judge issued a decision granting summary
7 judgment to the plaintiffs indicating that
8 these arrests on the sidewalk violated their
9 constitutional rights?

10 A. No.

11 Q. Do you know whether following the
12 issuance of this summary judgment decision if
13 the City of New York reviewed the procedures
14 utilized by the NYPD in policing the sidewalk
15 protest of August 31, 2004, regarding
16 constitutional limits on police power?

17 A. I don't know.

18 MR. STECKLOW: I would like to mark
19 this as Plaintiffs' Exhibit 4.

20 (Plaintiffs' Exhibit 4, one page
21 depicting color copies of three photos,
22 marked for identification, as of this date.)

23 Q. Before we move on, one more
24 question about the August 31, Fulton Street
25 arrest. Did the City of New York review the

1 Gannon

2 procedures utilized by the NYPD in policing
3 the sidewalk protest of August 31, 2004,
4 regarding constitutional limits on police
5 power?

6 A. I don't know.

7 Q. Okay. Now I am showing you what
8 has been marked as Plaintiffs' Exhibit 4, and
9 I'll ask you if you've ever seen these images
10 before.

11 A. No.

12 Q. Do you recognize the officer in
13 this?

14 A. Officer -- it's Inspector Winski.
15 W-I-N-S-K-I.

16 Q. Now, there are three different
17 Winski brothers who are at one point MOS,
18 correct?

19 A. That's correct.

20 Q. Which particular Winski brother is
21 this?

22 A. This is --

23 Q. It's not a trick question.

24 A. Ed, it's Ed Winski. Edward. I
25 call him inspector Winski. His first name is

1 Gannon

2 Inspector, as far as I'm concerned.

3 MR. STECKLOW: Off the record.

4 (Discussion off the record.)

5 MR. STECKLOW: Back on the record.

6 Q. This is from an incident from
7 September 20, 2011. If you look at Exhibit 3,
8 it's listed as number 7 on Exhibit 3. And
9 these images came from the article that is
10 linked on Exhibit 7. Excuse me. On number 7
11 on Exhibit 3.

12 Did you ever review the article
13 that's linked there?

14 A. No.

15 Q. Are you familiar with the facts and
16 circumstances of this incident?

17 A. No. Although, this is another --
18 this is a case that I think was settled and I
19 think -- I think -- I think in this particular
20 case Inspector Winski was found to have used
21 some level of -- some level of force. But --
22 and I think that was -- I think it was settled
23 for a minor amount.

24 But other than that, I don't know
25 too much details of the event, too many

1 Gannon

2 details of the event.

3 Q. Was this individual arrested on the
4 sidewalk -- withdrawn.

5 Was this individual sidewalk arrest
6 consistent with constitutional limits on
7 police power?

8 A. I can't tell from the pictures
9 here.

10 Q. Do you know whether this individual
11 sidewalk arrest was consistent with
12 constitutional limits on police power?

13 A. I don't know the circumstances that
14 led up to the arrest. It's hard to tell from
15 these three still photos here.

16 Q. So do you know whether this
17 individual sidewalk arrest was consistent with
18 constitutional limits on police power?

19 A. I can't determine that based on
20 what I see here.

21 Q. So you don't know?

22 A. I don't know. I can't determine
23 what it is. I don't know.

24 Q. What, if anything, did the City of
25 New York do to avoid similar future arrests,

1 Gannon

2 similar to this one?

3 A. Again, just to go back to my
4 previous statement about the filed -- the
5 filed lawsuits, the NYPD doesn't -- doesn't
6 necessarily change its policies based on an
7 individual -- an individual act. Here it's
8 clearly, you know, a one-off here with
9 Inspector Winski.

10 Q. Did the NYPD policing of this
11 sidewalk protest on this day indicate to the
12 City of New York that the NYPD procedures
13 regarding policing of sidewalk protest were
14 sufficient to comply with constitutional
15 limits on police power?

16 A. I cannot -- I cannot determine that
17 based on what I see here.

18 Q. Do you know whether the City of New
19 York reviewed the procedures utilized by the
20 NYPD in policing the sidewalk protest of
21 September 20, 2011, regarding constitutional
22 limits on police power?

23 A. I do not.

24 MS. ROBINSON: Just for the record,
25 in item number 7 it's a little confusing

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Gannon

because you have 9/20 -- it lists it as 9/20/11, but the photographs are from a different date. So I believe it's causing confusion.

Q. What date do you believe the photographs are from?

MS. ROBINSON: September 19, 2011. Not the arrest on 9/20/2011.

MR. STECKLOW: So you believe that this arrest occurred on September 19 and not September 20?

MS. ROBINSON: I believe so.

MR. STECKLOW: I actually think that's from the --

MS. ROBINSON: And 9/20/2011, as we all know, is a different incident. Right?

MR. STECKLOW: I think there are multiple incidents on each date. So if we're talking about a different incident, I'm talking about the incident that's reflected in this. These are the questions I'm asking.

Q. Are you answering the questions

1 Gannon

2 based on your knowledge of what happened in
3 Exhibit 4 or some other way?

4 A. I was basing it on I thought
5 Inspector Winski was part of a litigation and
6 there was a judgment against him at a certain
7 point. That's what I thought these pictures
8 reflected.

9 Q. Okay. Looking at the picture
10 reflected in Exhibit 4, if this in fact
11 happened on 9/19/2011, would that change any
12 of the answers you have previously given?

13 A. Well, it was a different -- if it
14 was a different person arrested, it would
15 certainly change the litigation part of it. I
16 don't know.

17 Q. So reflecting solely on the
18 individual in the orange hat in this image,
19 this is the individual arrest we're talking
20 about in these questions. Okay?

21 A. Okay.

22 Q. So I'm going to review the
23 questions again.

24 A. Sure.

25 Q. Are you familiar with the facts and

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Gannon

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circumstances of the incident that you can see
3 in the three photographs of Exhibit 4?

4

A. No.

5

6

Q. Do you know whether the individual
sidewalk arrest that's depicted in Exhibit 4
7 is consistent with the constitutional limits
8 on police power?

9

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A. I can't determine that based on the
three pictures that I see here in exhibit
11 number 4.

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Q. Did the NYPD policing of the
sidewalk protest of the day depicted in
Exhibit 4 indicate to the City of New York
that the NYPD procedures regarding policing of
sidewalk protests were sufficient to comply
with constitutional limits on police power?

18

A. I don't know.

19

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21

22

Q. Did the City of New York review the
procedures utilized by the NYPD in policing
the sidewalk protest that's depicted in
Exhibit 4?

23

A. I don't know.

24

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Q. Can you identify any review by the
NYPD or the City of New York of procedures it

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utilized in policing sidewalk protests based on the events of -- depicted in Exhibit 4?

A. Read that one more time please.

Q. Can you identify any review by the City of New York and/or the NYPD of procedures utilized in policing sidewalk protests based on the events depicted in Exhibit 4?

A. No, but I don't -- I don't believe they would necessarily conduct a review based on an arrest on a sidewalk. A one-off with Inspector Winski, I'm not sure that would warrant a review, but I can't identify one.

Q. Looking back at Exhibit 3, we see that number 8 has a date of September 24, 2011 and underneath it has approximately ten different lawsuits that were filed for arrests on that date. Do you see that --

A. I do.

Q. -- in Exhibit 3?

A. I do.

Q. Are you familiar with the facts and circumstances of the arrest on this date?

A. Somewhat, yes.

Q. Do you know how many arrests were

1 Gannon

2 made on this date?

3 A. I don't.

4 Q. Do you have an idea of what --
5 withdrawn.

6 Can you give an estimate of how
7 many arrests were made on this date?

8 A. There's ten people listed, so I
9 would at least ten. But I don't know. I
10 don't know for sure. Ten litigants here
11 listed on Exhibit 3.

12 Q. Do you know if any of these cases
13 that were filed listed on Exhibit 3 under
14 number 8 had multiple plaintiffs involved?

15 A. I don't know.

16 MR. STECKLOW: I would like to mark
17 this as Exhibit 5.

18 (Plaintiffs' Exhibit 5, Letter dated
19 May 5, 2014, marked for identification, as
20 of this date.)

21 MS. ROBINSON: Exhibit 5 has a
22 Wiles (phonetic) Bates stamp, but not a
23 Packard Bates stamp.

24 MR. STECKLOW: It's been turned
25 over. This was part of a much longer

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document that was produced by the District Attorney of New York in response to a FOIA request. I produced the cover letter and the relevant page.

MS. ROBINSON: In Packard.

MR. STECKLOW: I produced the entire document in Packard. For this deposition I only -- I'm trying to spare some trees so I only --

MS. ROBINSON: Understood.

Q. Looking on the second page of this document, it indicates that on September 24, 2011, there were 91 total arrests. Is that accurate?

A. September 24?

Q. 2011.

A. Total of 91 arrests, that's correct.

Q. And of those 91 arrests six of those defendants warranted, correct?

A. Correct.

Q. And 85 received dispositions, correct?

A. Correct.

1 Gannon

2 Q. And of those dispositions 43 were
3 dismissed, correct?

4 A. I don't see that. Where is that?

5 Q. Underneath it says, "Dispositions
6 include" and the last thing there says
7 "dismissal 43."

8 A. Oh, probably -- yes, it does.
9 43, dismissal 43.

10 Q. So 43 of the 85 disposed of cases
11 were dismissed outright, correct?

12 A. Correct.

13 Q. Another 36 were dismissed pursuant
14 to an adjournment and contemplation of
15 dismissal, correct?

16 A. Well, they weren't dismissed,
17 right? They were ACD.

18 Q. What does ACD stand for?

19 A. Adjudicated contem- -- adjudicated
20 in contemplation for dismissal.

21 Q. It's adjournment --

22 A. Adjournment. Thank you.

23 Q. -- in contemplation of dismissal?

24 A. Right.

25 Q. In six months subsequent to the

1 Gannon

2 date that the ACD is entered the case is
3 dismissed and sealed. Isn't that correct?

4 A. That's correct.

5 Q. So 43 were dismissed outright, 36
6 were dismissed and sealed six months later.
7 So that means 92 percent of the 85 arrests
8 that were disposed were dismissed within six
9 months, correct?

10 MS. ROBINSON: Objection. You can
11 answer.

12 A. I'll trust you on the math, but
13 that sounds right.

14 Q. Based on a 50 percent outright
15 dismissal rate and a 92 percent six-month
16 later dismissal rate what, if anything, did
17 the NYC do to avoid similar future arrests
18 that are inconsistent with constitutional
19 limits on police power?

20 A. Well, in this case why these were
21 dismissed, that's up to the District
22 Attorney's office. It's not the -- the Police
23 Department had probable cause to make the
24 arrest. They present the cases to the
25 District Attorney and what the District

1 Gannon

2 Attorney chooses to do is certainly up to
3 them, but probable cause for the -- there were
4 probable cause to make these arrests and the
5 District Attorney chose not to -- for whatever
6 reason took the action they took.

7 Q. Thank you. I'm going to ask the
8 question again, because I'm not asking you why
9 the cases were dismissed. I'm not asking you
10 if there was probable cause.

11 I'm asking you based on the fact
12 that 50 percent of these arrests were
13 dismissed outright and 92 were dismissed
14 within six months, what if anything did the
15 City of New York do to avoid similar future
16 arrests that are inconsistent with the
17 constitutional limits on police power?

18 A. I'm not sure you can draw that
19 conclusion that it's inconsistent with
20 constitutional power. The District Attorney's
21 office has a wide range of discretion. So why
22 they did this, I don't know. Whether it
23 warrant correction, I don't think it would
24 warrant any correction by the City of New York
25 because we had probably cause to make the

1 Gannon

2 arrests.

3 (Reporter requested clarification.)

4 A. Because the arrests were based on
5 probable cause.

6 Q. Did the NYPD or City of New York
7 make any changes of police sidewalk protests
8 as a result of the arrest of 9/24/11?

9 A. Not that I'm aware of.

10 MR. STECKLOW: Off the record for a
11 second.

12 (Discussion off the record.)

13 MR. STECKLOW: Back on the record.

14 Q. Based on the dismissals of
15 92 percent of the arrests of that date, can
16 you identify anything New York City did to
17 avoid arrests that are inconsistent with
18 constitutional limits on police power?

19 A. No.

20 Q. Did the NYPD policing of the
21 sidewalk protest on 9/24/11 indicate to the
22 City of New York that the NYPD procedures
23 regarding policing of sidewalk protests were
24 sufficient to comply with constitutional
25 limits on police power?

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A. Read that one again, Wylie, please.

Q. Did the NYPD policing of sidewalk protests of 9/24/11 indicate to the City of New York that the NYPD procedures regarding policing of sidewalk protests were sufficient to comply with constitutional limits on police power?

A. I'm not sure how to answer that. Could you rephrase that or is it -- are you married to that question, my friend?

Q. I'm not married to anything at this point.

MR. STECKLOW: Off the record.

(Discussion off the record.)

MR. STECKLOW: Back on the record.

Q. I'm going to say it again and then help me understand which part of it is confusing. Okay?

Did the NYPD policing of the sidewalk protest on 9/24/11 indicate to the City of New York that the NYPD procedures regarding the policing of sidewalk arrests were sufficient to comply with constitutional limits on police power?

1 Gannon

2 MS. ROBINSON: For the record, are
3 you referring to the cases in 8?

4 MR. STECKLOW: Yes. And -- not
5 just the cases in 8, but all the arrests
6 of 9/24/11. Not everybody sued. There
7 were 91 arrests; 6 warranted, 85 disposed
8 and I think there were probably 30 or so
9 plaintiffs among those.

10 A. I don't think -- I don't know if
11 it's responsive to the question or not. I
12 don't think the City of New York required any
13 changing in the way sidewalk protests were
14 handled.

15 Q. Can you identify any review by the
16 City of New York to the procedures utilized by
17 the NYPD in policing the sidewalk protests of
18 9/24/11?

19 A. Are these the cases involving
20 Inspector Bologna?

21 Q. Among others.

22 A. I know inspector -- well, what was
23 your question again?

24 Q. Can you identify any review by the
25 City of New York of the procedures utilized by

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the NYPD in policing the sidewalk protests of 9/24/11?

A. With respect to Inspector Bologna, Anthony Bologna, B-O-L-O-G-N-A, I know that the inspector was disciplined for what happened and that he wasn't indemnified and it was -- again, that was kind of a one-off as far as Inspector Bologna. I don't think it changed -- it didn't change policy because it was kind of out of the norm of what the policy would be. So to that specific thing I would say no. The policy and procedures weren't changed. Inspector Bologna was disciplined for his actions on that date.

If I'm talking about the same thing, that was when Inspector Bologna used pepper spray on folks that were on the scene that day. As far as that's concerned, it didn't change the policy because it was kind of -- it was more of an issue with Inspector Bologna and he was disciplined for that. He was disciplined, he was transferred, he was not indemnified.

Q. Okay. My question didn't concern

1 Gannon

2 Inspector Bologna so I'm going to go back and
3 ask it again.

4 A. Okay. But you said --

5 Q. And you can say, look, the possible
6 answer is there was this one aspect of it that
7 was Bologna, now let's look at another aspect.

8 A. That's fine, but Bologna --

9 Q. Other than the review you just
10 mentioned regarding Inspector Bologna, can you
11 identify any review by the City of New York
12 for procedures utilized by the NYPD in
13 policing the sidewalk protest of 9/24/11?

14 A. Other than Inspector -- what I
15 mentioned about Inspector Bologna, no.

16 Q. Did the City of New York consider
17 whether the procedures utilized by the NYPD in
18 policing sidewalk protests needed to be
19 reviewed based on the events of 9/24/11, other
20 than in regards to Inspector Bologna?

21 A. No.

22 Q. Did the City of New York consider
23 whether procedures utilized by the NYPD in
24 policing sidewalk protests needed to be
25 changed based on the events of 9/24/11?

1 Gannon

2 A. No in that, again, Inspector
3 Bologna being the theme here for my
4 perspective, his actions that day were out of
5 the norm so that individually he was, again,
6 disciplined and what I said before,
7 disciplined, transferred, and he was not
8 indemnified by the City of New York for his
9 actions that day. So the answer would be no.

10 Q. Okay. Other than what you
11 responded regarding Inspector Bologna, did the
12 City of New York consider whether the
13 procedures utilized by the NYPD in policing
14 sidewalk protests needed to be changed based
15 on the events of 9/24/11?

16 A. No.

17 Q. Now we're going to look at what is
18 on Exhibit 3 as number 11. Now, you
19 previously testified that you did watch video
20 of the Bronx incident, correct?

21 A. Correct.

22 MR. STECKLOW: We're going to queue
23 up the video. While we're doing that,
24 I'm going to ask you to mark this as
25 Exhibit 6.

1 Gannon

2 (Plaintiffs' Exhibit 6, letter dated
3 January 19, 2012, marked for identification,
4 as of this date.)

5 MR. STECKLOW: We are now going to
6 watch the video. It's going to take a
7 few minutes and I am going to ask you
8 some questions.

9 (Video played.)

10 Q. I believe you are familiar with
11 this.

12 A. Yes.

13 (Video played.)

14 MR. STECKLOW: Let's mark this as
15 Exhibit 7.

16 (Plaintiffs' Exhibit 7, letter dated
17 January 1, 2012, marked for identification,
18 as of this date.)

19 (Video played.)

20 Q. Are you familiar with this video?

21 A. That's the most I've seen of it, so
22 I didn't see the whole thing previously.

23 Q. You know there were complaints
24 filed about this incident?

25 A. I don't know that, that there were

1 Gannon

2 complaints filed about this incident.

3 Q. Do you know if there was an
4 investigation involving this incident?

5 A. There was an investigation. Not
6 about this incident.

7 Q. Who undertook that investigation?

8 A. That I don't know.

9 Q. What was -- what did they do in
10 that investigation?

11 A. I know the outcome of the
12 investigation was that it was determined that
13 the folks were at some point blocking the
14 sidewalk with maybe furniture or some sort of
15 other chairs or some sort of maybe a table and
16 chairs. Something like that. So an internal
17 investigation revealed that it was -- they
18 were blocking the sidewalk at some point.

19 Q. So the result in the investigation
20 was that that was appropriate police conduct?

21 A. That they were -- that they had
22 probable cause because they were blocking the
23 sidewalk at some point.

24 Q. I'm not asking about some point.
25 I'm asking if --

1 Gannon

2 According to this video, there were
3 five arrests. We saw at least two of them.
4 I'm asking if the results of the investigation
5 were that those arrests were appropriate
6 arrests.

7 A. I don't think the investigation
8 determined what the -- whether there was
9 probable cause or not for the arrest. There
10 was probable cause -- well, they arrested them
11 based on probable cause. They can't determine
12 that from the video what happened. You know,
13 the video doesn't show you what happened as
14 far as them getting arrested.

15 Q. The video is approximately ten
16 minutes long, correct?

17 A. Okay. I didn't measure it. That's
18 fine.

19 Q. Approximately?

20 A. Approximately.

21 Q. And you can see a very wide
22 sidewalk with not many people on it, correct?

23 A. Well, at the point of the arrest
24 that we saw the video always gets there after
25 the person was arrested. So I can't tell you

1 Gannon

2 what the basis of the arrest was based on the
3 video that I saw.

4 Q. Did you see any pedestrians being
5 blocked in the video?

6 A. I did not, no.

7 Q. In order to make an arrest --
8 withdrawn.

9 In order to make an appropriate
10 arrest for blocking pedestrian traffic, is it
11 required that, in fact, pedestrian traffic be
12 blocked?

13 A. In this case I don't know what was
14 the basis of it because it doesn't show that
15 on the video. Every time the guy with the
16 video camera gets there it's -- the event is
17 already done. So I can't tell you what they
18 were, you know, what the nature of it was
19 because we don't see that on the video.

20 Q. That wasn't my question so I'm
21 going to go back and ask the question again.
22 Listen to my question and please answer the
23 question that I'm asking.

24 In order to effectuate a
25 constitutionally appropriate arrest for

1 Gannon

2 blocking pedestrian traffic, is there a
3 requirement that, in fact, a pedestrian be
4 blocked on the sidewalk?

5 A. In general? Yes.

6 Q. Not in general. Specifically. Is
7 that required?

8 A. To be arrested for blocking
9 pedestrian traffic do you have to block a
10 pedestrian?

11 Q. Yes.

12 A. Yes.

13 Q. Were you able to see any
14 pedestrians in this video being blocked, at
15 any time?

16 A. I did not see that in the video,
17 but that doesn't mean it didn't happen.

18 Q. So just to be clear. The position
19 the City of New York is taking with regards to
20 the incident that's depicted in this video on
21 December 3, 2011 is that the police acted
22 appropriately and within constitutional
23 limits?

24 A. Yes.

25 Q. And that the arrests were

1 Gannon

2 consistent with the constitutional limits of
3 police power?

4 A. Yes.

5 MR. STECKLOW: Okay. Let's take a
6 quick break. The time is now 12:38.

7 (Recess taken.)

8 MR. STECKLOW: The time is now 1241
9 and we are back on the record. We are
10 still at my office at 217 Centre Street.

11 Q. We're now going to look at, on D3,
12 I believe it is going to be number 12. This
13 is a January 1, 2012 incident.

14 A. Number 12 or number 13?

15 Q. 12 is January 1st, 2012.

16 A. Correct.

17 Q. The Peat matter?

18 A. Yes.

19 Q. Are you familiar with the facts and
20 circumstances of this incident?

21 A. No.

22 Q. I'm going to now show you what has
23 been marked as -- I'm not going to ask you to
24 read the whole thing. Okay? I'm just going
25 to ask you to hold this, what has been marked

1 Gannon

2 as Plaintiff's 7. We have skipped 6 and I'm
3 aware of that. We will come back to it.

4 So I'm not asking you to read the
5 whole thing because I don't want to spend 10
6 minutes watching you read it. I'm just asking
7 if you have ever seen this document before.

8 A. No. The question was did I ever
9 see this before, right?

10 Q. Yes. And what you are looking at,
11 which is Exhibit 7, is an unusual incident
12 report filed concerning the incident of
13 January 1, 2012, correct?

14 A. An unusual occurrence report.

15 Q. An unusual occurrence report.
16 Thank you.

17 A. Dated January 1, 2012.

18 Q. And the author, I believe, is
19 Deputy Inspector Brandon del Pozo?

20 A. Correct. Del Pozo. D-E-L
21 P-O-Z-O.

22 Q. Do you know whether the NYPD or the
23 City of New York undertook a review of the
24 procedures utilized by the NYPD in policing
25 the sidewalk protest of January 1, 2012

1 Gannon

2 regarding constitutional limits on police
3 power?

4 A. I do not know.

5 Q. Can you identify any review by the
6 City of New York of the procedures utilized by
7 the NYPD in policing the sidewalk protest of
8 January 1, 2012, regarding constitutional
9 limits on police power?

10 A. No.

11 Q. Did the NYPD policing of that
12 sidewalk protest comply with the
13 constitutional limits on police power?

14 A. I don't know.

15 Q. Did the City of New York consider
16 whether the procedures utilized by the NYPD in
17 policing sidewalk protests needed to be
18 reviewed based on the events of that sidewalk
19 protest of January 1, 2012?

20 MS. ROBINSON: Objection. Beyond
21 the scope.

22 Q. You can answer.

23 A. I don't know.

24 Q. Did the City of New York consider
25 whether procedures utilized by the NYPD in

1 Gannon

2 policing sidewalk protests needed to be
3 changed based on the policing of the sidewalk
4 protest of January 1, 2012?

5 MS. ROBINSON: Same objection.

6 A. I don't know.

7 Q. Okay. We're going to move on to
8 number 13 on the list. We're going to watch
9 the video in a second, but before we do I'm
10 going to ask you if you are familiar with the
11 facts and circumstances of the incident of
12 February 29, 2012, in front of Zucotti Park.

13 MS. ROBINSON: Objection. Beyond
14 the scope. You can answer.

15 A. February 29th? I don't think I
16 am familiar with the events of this day.
17 Koznar? I don't think so. The video may
18 refresh my memory. Off the top of my head, I
19 don't think so.

20 MR. STECKLOW: Let's watch the
21 video. It's two minutes.

22 (Video played.)

23 MR. STECKLOW: Stop it for one
24 second.

25 Q. I'll tell you when we're going to

1 Gannon

2 see Koznar.

3 A. Okay.

4 Q. That's not -- this is not Koznar.

5 A. Okay.

6 (Video played.)

7 Q. This is Koznar.

8 A. This guy with the red?

9 Q. Yes.

10 In watching this video, did you
11 identify any pedestrians that were being
12 blocked on the sidewalk?

13 A. No. I couldn't. I couldn't
14 determine very much from that video. It
15 doesn't really show you the whole scope of the
16 sidewalk.

17 Q. Could you identify any pedestrians
18 that were being blocked on the sidewalk by
19 watching this video?

20 A. I could not determine that from
21 this video.

22 Q. Did you see any pedestrians being
23 blocked on the sidewalk in this video?

24 A. I could not determine that at all
25 based on this video.

1 Gannon

2 Q. I'm not asking you if you
3 determined. I'm asking whether you saw any
4 pedestrians being blocked on the sidewalk from
5 watching this video.

6 A. As limited as the focus was on this
7 video, it doesn't show you the whole scope of
8 what's going on there. I couldn't tell you if
9 there were pedestrians on the sidewalk, they
10 were not on the sidewalk. I can't tell from
11 this video. That's -- I mean the quality is
12 much better than the first video. You're
13 getting better as we go along. That
14 determination, I couldn't tell you. I could
15 not tell you.

16 Q. That didn't look to you to be a
17 wide open sidewalk with people lined up on one
18 side of it with the police in the middle?

19 A. No.

20 Q. What did you see?

21 A. That's the front of --

22 Q. Zucotti Park?

23 A. Not the front. It's the Broadway
24 side of Zucotti. So you couldn't even see
25 behind the folks there. There's steps behind

1 Gannon

2 that. So you couldn't even see that in the
3 video, where the steps are. So I couldn't
4 tell you if there's people walking behind them
5 or not. The shot was so tight. I couldn't
6 tell.

7 Q. But the steps, are those part of
8 the sidewalk?

9 A. The steps are the steps. There is
10 no steps on sidewalks.

11 Q. I didn't ask you if pedestrians are
12 being blocked on the steps. I'm asking if
13 they're being blocked on the sidewalk.

14 You can see -- you can see the
15 entirety of the sidewalk from the curb where
16 the police vehicles were on the sidewalk where
17 the police were to the edge of the sidewalk
18 towards the steps where the civilians were.
19 And did you see any pedestrians that were
20 being blocked by those individuals, the
21 civilians?

22 A. I got the question. My response is
23 that I can't tell you if there were
24 pedestrians back there because the video is so
25 tight that I can't make that determination,

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whether there were or there were not. There
3 is no -- there is no way of telling that from
4 what I saw.

5

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Q. And what investigation did you do
in preparation for today's deposition to
answer questions about this incident?

8

A. This? Nothing.

9

10

11

Q. Did you believe that Mr. Koznar's
arrest is consistent with the constitutional
limits on police power?

12

13

A. I have no idea. I can't determine
that from the video.

14

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Q. Let's go back to the moment when
they grabbed Mr. Koznar. You can see the
cameras focuses -- faces him. Play it there
and I will tell you when to stop.

18

(Video played.)

19

MR. STECKLOW: Stop it.

20

21

22

Q. Now you can see behind them on the
steps. Now you can see into the park at that
angle, correct?

23

A. You can see into the park, correct.

24

25

Q. Do you see any civilians, any
pedestrians, anyone being blocked by

1 Gannon

2 Mr. Koznar as he stands there?

3 A. In this particular frame? No.

4 Q. So based on the stoppage of the
5 video here and knowing that this is
6 approximately two seconds after one officer
7 pointed at him and said "Take him," what do
8 you believe is the probable cause for his
9 arrest?

10 A. You're making the assumption that
11 at that moment in time he did something wrong.
12 Mr. -- Mr. Koznar -- is that his name?
13 Mr. Koznar? He could have done something
14 previously and they're basing the arrest on
15 that. I don't know what they're basing the
16 arrest on is my point.

17 It may not be that one particular
18 time when the -- I don't know who says that,
19 but whoever directs that he be arrested. It
20 doesn't necessarily have to mean that. One --
21 when he said that, it doesn't have to be a
22 crime committed at that point or probably an
23 offense committed at that point.

24 (Reporter requests clarification.)

25 A. I said "crime." I corrected it to

1 Gannon

2 be "offense."

3 It could have been an offense
4 committed at that moment. So I don't know.
5 Based on -- based on what I'm seeing in the
6 video that you showed me so far, I cannot
7 possibly tell you what the -- why Mr. Koznar
8 was arrested.

9 Q. Was Mr. Koznar blocking pedestrian
10 traffic from the video that you have seen?

11 A. In this particular frame it doesn't
12 appear to be blocking pedestrian traffic. I
13 don't know the gentleman to his left, I don't
14 know if he's part of the protest or not. I
15 don't know who he is. I don't know whether he
16 was walking. I don't know. You can't
17 determine it based on the video I've seen.

18 Q. Well, if there's -- you're pointing
19 to one individual with a beard, correct?

20 A. Yes.

21 Q. Now, we have seen the sidewalk is
22 barely empty, other than Police Officers. So
23 if that individual who was not a protestor was
24 seeking to traverse that sidewalk he would
25 have absolutely no difficulty traversing that

1 Gannon

2 sidewalk. So I'm trying to understand. Do
3 you see a basis for Mr. Koznar's arrest in the
4 video that you have watched?

5 A. I can't make a determination based
6 on what I've seen here to answer that question
7 directly.

8 Q. I'm not asking you to look outside
9 the scope. I'm asking you looking at the
10 video, based on what you can see, do you see a
11 basis for his arrest?

12 A. I -- I don't know what happened off
13 camera. I just can't -- I can't give you a
14 full answer on that. I can't give you a
15 genuine answer on that based on what happened.

16 I don't know what the officer saw
17 or more in particular the person who directed
18 the arrest, I don't know who that was who
19 directed the arrest saw. I don't know what
20 the basis was for that arrest. I don't know
21 what the video camera showed. I don't feel
22 comfortable saying "yes" or "no" depending on
23 what -- based on what I've seen.

24 Q. Is there anything in the video that
25 shows the basis for the arrest?

1 Gannon

2 A. No. But I -- I just don't know
3 what happened when it was off camera.

4 Q. Do you know if the City of New York
5 undertook any investigation into the police
6 practices based on the arrest of Mr. Koznar?

7 A. I don't.

8 Q. Do you know if the City of New York
9 made any changes to the police practices on
10 the limits of constitutional -- withdrawn.

11 Do you know if the City of New York
12 made any changes to police practice based on
13 the arrest of Mr. Koznar?

14 A. The City of New York wouldn't make
15 changes based on -- based on an individual
16 arrest.

17 Q. So do you know if the City of New
18 York made any changes to the police practices
19 based on this arrest?

20 A. I don't think so.

21 Q. Did the City of New York consider
22 whether the procedures utilized by the NYPD in
23 policing the sidewalk protest in front of the
24 Zucotti Park needed to be reviewed based on
25 the events in this arrest?

1 Gannon

2 A. No.

3 Q. Did the City of New York consider
4 whether the procedures utilized by these
5 officers in policing the sidewalk in front of
6 the Zucotti Park needed to be changed based on
7 the events?

8 A. Start again. I missed the
9 beginning of the question.

10 Q. Did the City of New York consider
11 whether the procedures utilized by the NYPD in
12 policing the sidewalk in front of Zucotti Park
13 needed to be changed based on this arrest?

14 A. No.

15 MR. STECKLOW: Let's go off the
16 record. I think this is a good time to
17 break for lunch.

18 (Luncheon recess taken at 12:58 p.m.)

19 --o0o--

20 A F T E R N O O N S E S S I O N

21 (Time noted: 1:46 p.m.)

22 L T. D E N N I S G A N N O N, resumed and
23 testified as follows:

24 CONTINUED EXAMINATION

25 BY MR. STECKLOW:

1 Gannon

2 MR. STECKLOW: The time is now
3 1:47. We're back on the record. We have
4 all the same parties here except Carrie
5 Talansky has left the building and is no
6 longer here.

7 Q. We are going to continue now and we
8 are going to look at some video that was
9 turned over by the City of New York from
10 September 17, 2012. So can we turn that
11 around. This, I think, it was identified as
12 LMSI video or CCTV video. I'm not sure
13 exactly the right term to -- but I think it's
14 the stuff that comes out from the cameras that
15 are streetlights.

16 So this is from the morning of
17 September 17, 2012. You can see it's about
18 7:41. We are looking north on Broadway at the
19 intersection of Wall Street.

20 (Video played.)

21 Q. What I would like to identify in
22 the video that we are watching is you can see
23 a crosswalk at the bottom of the screen. Is
24 that correct, Lieutenant?

25 A. Correct.

1 Gannon

2 Q. And the crosswalk seems to be open,
3 correct? There seem to be barricades on both
4 sides of Broadway, but at the crosswalk the
5 barricades are open to allow for access, I
6 guess, to cross the street. Is that accurate?

7 A. Correct.

8 Q. Have you seen LMSI video before?

9 A. No.

10 Q. My understanding is that they are
11 at times monitored by individuals and they may
12 not be city employees. It is an entity that
13 exists as in relationship between big
14 corporations downtown and the City of New York
15 and NYPD. I think LMSI stands for Lower
16 Manhattan Security Initiative.

17 A. Lower Manhattan Security. Yes,
18 that's correct. I don't know if the
19 characterization is big corporations. I know
20 it's a -- it's a team effort. I'm not sure --
21 I'm not sure who the parties are exactly, but
22 it is a group effort though.

23 Q. What I am trying to point out is
24 that I believe these cameras are at times
25 monitored and people can move the camera left,

1 Gannon

2 move it right, focus in, pull out, things like
3 that.

4 A. Okay.

5 Q. And then I think at some point we
6 are going -- whoever is observing is going to
7 change the angle of --

8 A. Oh, I gotcha.

9 (Reporter requested clarification.)

10 Q. -- the camera. Whoever is
11 observing this camera is going to change the
12 angle of the camera.

13 Right now at 7:43 a.m., would you
14 agree that the sidewalks on both the east and
15 west side of Broadway as it approaches Wall
16 Street are -- pedestrians are able to walk
17 freely on both sides?

18 A. Yes, I would agree with that.

19 Q. I'm going to move it so that it
20 goes a little faster so we can watch it in --
21 so now I've made it so the video will play a
22 little faster and I will stop it when I think
23 we get to a good time. We can see pedestrians
24 crossing at the crosswalk, correct?

25 A. Yes.

1 Gannon

2 (Video played.)

3 Q. As we are watching it, we can see
4 that pedestrians and vehicular traffic are
5 able to move on the sidewalks and the road,
6 correct?

7 A. Yes.

8 Q. Now we start to see on the west
9 side of the street the barricade being
10 maneuvered, correct?

11 A. Yes.

12 Q. It's approximately 7:46 and 42
13 seconds. We see Police Officers moving the
14 barricades on the east -- west side of the
15 street, correct?

16 A. Correct.

17 Q. And as I stop it again we are now
18 at 7:47 and 37 seconds. On the west side of
19 the street the police have now closed the
20 crosswalk by putting barricades up; is that
21 correct?

22 A. There is barriers there. I would
23 like to see if anybody tries to cross that
24 way. I just don't know if --

25 Q. And on the west side of the street

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Gannon

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a line of blue shirt Police Officers seem to
3 be lining up and I believe they will, in a few
4 seconds, close off the crosswalk on the west
5 side of the street.

6

I ask you to focus on that.

7

A. Sure.

8

(Video played.)

9

Q. So we're now at 7:48 and although
10 the police have closed off partially the
11 crosswalk, they are allowing certain people to
12 cross street, correct?

13

A. People are crossing the street.

14

Whether Police Officers allowed them to cross
15 the street or not, but there are some people
16 crossing the street. It looks like there is a
17 Police Officer getting ready to plug a hole
18 that was there.

19

Q. Are the police arresting anybody
20 who is crossing the street?

21

A. Not in the video.

22

Q. Okay. So we now stopped it at
23 7:48, around 43 seconds and whoever was
24 observing this camera just moved the angle; is
25 that correct?

1 Gannon

2 A. Correct.

3 Q. And so we can no longer see the
4 west side of Broadway, correct?

5 A. Correct.

6 Q. You can only see the east side of
7 Broadway, correct?

8 A. Correct.

9 Q. And on the east side of Broadway we
10 see there are now a lot of pedestrians on the
11 sidewalk, correct?

12 A. Yes. I would probably describe
13 them as protestors, but there are more --
14 there are -- yeah.

15 I would say they're protestors
16 because they have banners and stuff like that.
17 So they're protestors on the east side of
18 Broadway.

19 Q. And the people who you described as
20 protestors could no longer traverse down south
21 on Broadway as had been happening five minutes
22 earlier, correct?

23 A. Correct. It appears they've
24 stopped.

25 MR. STECKLOW: And I think --

1 Gannon

2 I'm going to let it go a little bit
3 and then we're going to watch another
4 video to show why it was that they
5 stopped.

6 (Video played.)

7 Q. Can you tell from this video why
8 they stopped?

9 A. No.

10 MR. STECKLOW: I am going to slow
11 it down for a second so we can see it in
12 real time.

13 (Video played.)

14 Q. I'm asking you to look down on the
15 right-hand side. Can you see the individual
16 who looks like he's wearing a pink top? Now
17 you can only see his head?

18 A. Yeah, I see the pink top. Yes.

19 Q. That is Plaintiff Bishop Packard.
20 See he was in sort of the front of the people
21 on Broadway who had stopped and were no longer
22 able to traverse south, correct?

23 A. Correct.

24 Q. And there are many people behind
25 him, correct?

1 Gannon

2 A. Yes.

3 MR. STECKLOW: We can now see
4 Bishop Packard again and you may not be
5 able to tell from this angle, but I
6 believe at this point he had handcuffs
7 placed on him and he's under arrest.
8 Let's stop it here.

9 Q. We are now at 7:54 and 53 seconds
10 a.m. Can you see that?

11 A. Oh, yes. Yes.

12 Q. Okay. And now the camera angle has
13 moved again slightly to show a little bit
14 wider angle, correct?

15 A. Correct.

16 Q. And you can see a little bit of the
17 sidewalk on the west side of Broadway,
18 correct.

19 A. Correct.

20 Q. So I'd like you to see if by
21 observing that you can see if people are --
22 pedestrians are able to traverse the sidewalk
23 on the west side of Broadway at this point.

24 (Video played.)

25 Q. The angle is now completely moved

1 Gannon

2 and we can see the west side of the Broadway
3 sidewalk, correct?

4 A. Correct.

5 Q. And are you able to see if
6 pedestrians are able to move on the west side
7 of Broadway at this point?

8 A. It appears there are pedestrians
9 walking on the sidewalk, on the west side.

10 Q. And the time is 7:55 and 20
11 seconds?

12 A. Yes. I'm sorry. I didn't know
13 that was a question. I thought it was a
14 statement.

15 Q. And as we're watching we can see
16 certain individuals being allowed to move
17 outside of the police area up and down in the
18 street, correct?

19 A. I would think that those folks are
20 unable to go up the sidewalk because of the
21 protestors on the east side of the sidewalk so
22 they're trying --

23 (Reporter requests clarification.)

24 A. I would think they're trying to get
25 to work. They're unable to walk on the

1 Gannon

2 sidewalk because it's obstructed so they're
3 trying to figure out a way to get around it
4 some how to go to work.

5 Q. And so they're?

6 A. I shouldn't say go to work. Go
7 about their business.

8 Q. They're being allowed to maneuver
9 outside of the police barriers in order to get
10 to work, as you stated?

11 A. I don't know if they're being
12 allowed to do it. There are people clearly
13 uninterested in the sidewalk protest and
14 they're trying to go around it. Now whether
15 they're allowed to do it or not, they are
16 doing it. It's just a matter of, you know, if
17 they found -- if they found a way they're
18 trying to, you know, get around this event to
19 get to where they have to go.

20 Q. Are the police preventing them from
21 doing this?

22 A. Are the police preventing the
23 other -- we'll call them the other people for
24 now. Are they preventing them from doing it?
25 Well, all right. To me it looks like they're,

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Gannon

right there, providing an access to where people had to go around so they're trying to let them go around the demonstration area there.

Q. Okay. I'm going to now -- now it seems like the pedestrians on the east side are starting to move north on the sidewalk.

A. Just let this run for a couple of seconds. Let me see. To me it looks more like a churning than a movement, but I just want to --

(Watching video.)

A. No. Some people are -- yeah. Some people are walking north on the east side.

(Reporter requests clarification.)

A. Some people are walking north on the east sidewalk and there is still a group that's in the original position there towards the front of the demonstration.

Q. Right in the middle of that group seems to be a white shirt Police Officer?

A. Yes.

Q. And a lot of the others seem to be photographers?

1 Gannon

2 A. To tell you the truth, I can't
3 tell.

4 Q. Okay. During the preceding five or
5 so minutes that were depicted here was that
6 crosswalk that we talked about earlier open or
7 closed to pedestrian traffic?

8 A. It appeared to be closed to
9 pedestrian traffic, that crosswalk.

10 Q. Now I would like us to watch a
11 video so we can see what is happening
12 underneath that's -- obviously the angle is
13 blocked by a building from what's below the
14 camera level. So I think we do have an angle
15 from a Taru video.

16 (Reporter requested clarification.)

17 MR. STECKLOW: From a Taru video.

18 T-A-R-U. We are going to take a quick
19 break and go off the record.

20 (Discussion off the record.).

21 MR. STECKLOW: The time is now 2:03
22 and we are back on the record.

23 Now I'm going to have us watch
24 another video that was from approximately
25 the same exact time, but from a different

1 Gannon

2 angle, at the same location.

3 (Video played.)

4 Q. So now we're looking -- I believe
5 we're looking north on Broadway at the
6 intersection of Wall Street from underneath
7 the scaffolding that was being blocked.

8 A. Okay.

9 Q. And what is it you can see as
10 you're looking more?

11 A. I see the sidewalk full of
12 protestors. I see a police presence in front
13 of them and I see some folks with cameras to
14 the left of -- to my left, which would be to
15 the west of the sidewalk.

16 MR. STECKLOW: So since the police
17 present is in front of the protestors, I
18 want you to watch it a little bit and let
19 me know if you believe that is the police
20 presence that stopped the protestors from
21 moving further south or east at this
22 point.

23 (Video played.)

24 Q. So the camera angle has just panned
25 down a little bit and I think we can actually

1 Gannon

2 see the corner of Wall Street for a second,
3 and we see barriers there with Police Officers
4 behind it. Is that accurate?

5 A. Yes.

6 Q. And for about 10 feet from that
7 corner heading north it's all Police Officers.
8 Is that accurate?

9 A. Yes. Well, police officers
10 generically speaking, right? Not the --

11 Q. Not the ranked --

12 A. Right.

13 Q. -- police officer. MOS.

14 A. Yes. Correct.

15 Q. These are all members of the
16 service, correct?

17 A. That's better, yes.

18 Q. So the protestors aren't actually
19 at the barrier of Wall Street. They are, you
20 know, some 10 or more feet beyond that as they
21 were heading south for anyone to get to that
22 particular intersection because of the police
23 presence. That's what seems to be depicted
24 here.

25 A. Well, I don't know why they stopped

1 Gannon

2 there. Whether they stopped and the police
3 came in in front of them afterwards, because
4 the previous shot they showed us we had the
5 scaffold in the way.

6 Here the Police Officers at the
7 lower part are behind barriers that would --
8 that are at the mouth of or the -- not the
9 mouth. The street of Wall Street there. Is
10 that -- did I make that clear?

11 Q. Yes.

12 A. So -- but -- so I can't tell you
13 whether the Police Department stopped them or
14 did they stop there because it's Wall Street.
15 I don't know. I couldn't tell from the
16 previous video and this video here. We're
17 there, but I don't know if we're there because
18 they stopped or we stopped them. I don't
19 know.

20 (Video played.)

21 Q. From watching the video, it doesn't
22 seem the police are allowing people to
23 continue south on Broadway. I have stopped
24 the video now at 1:08, time. I'm asking you
25 if it seems like the people cannot traverse

1 Gannon

2 south because of the police presence.

3 A. I'm going to break it up into two
4 groups here. The protestors and regular
5 people or non-protestors. Let me put it that
6 way. Before, the previous video, there were
7 people traveling south that were allowed to
8 travel south. See, these demonstrations we
9 try to -- we, NYPD, try to strike a balance as
10 to people who want to protest, that's great,
11 and people who want nothing to do with the
12 protest and just want to get to work. It's
13 8 o'clock in the morning. I use "work"
14 generically. People want to go about their
15 business or get to where they have to go.

16 Here it seems like the protest
17 group has stopped at the -- at the -- at Wall
18 Street while other folks who may have been
19 walking south not really paying attention to
20 who they're with have been bleeding out and
21 walking south which we saw in the previous
22 video, and continue to walk south down to --
23 south of Wall Street.

24 There are also people coming up
25 walking north on Broadway and that were kind

1 Gannon

2 of cutting over and going across to the west
3 side of Broadway. That's -- that's how I
4 would describe what I see.

5 Q. Are you familiar with the
6 allegations of this lawsuit?

7 A. I don't believe so, no.

8 Q. This is the lawsuit that you are
9 here to testify about, correct?

10 A. Packard. This is Packard; is that
11 right.

12 Q. Yes. And so you're unfamiliar with
13 the factual basis of whether or not the
14 protestors claim the police blocked their path
15 at that point to further go east, west or
16 south?

17 A. I'm not familiar with that. That's
18 correct.

19 Q. And from watching this you can't
20 count 20 or more Police Officers between the
21 protestors and Wall Street and understand that
22 the protestors had an inability of proceeding
23 any further south than they already were
24 because there are possibly at least 20
25 officers in this shot between them -- between

1 Gannon

2 the protestors and Wall Street?

3 A. Well, you asked me previously, did
4 the Police Department stop them from traveling
5 south. I told you I couldn't make that
6 determination because I don't know whether
7 they stopped themselves and then we came in
8 front of them or -- or we stopped them from
9 traveling south. I couldn't tell you because
10 you couldn't determine that from the video.

11 Now, they're not traveling south
12 and we are in front of them. So we may be
13 preventing them from going further south.

14 Q. Have you spoken to any of the
15 officers that were present on the scene before
16 today's deposition in order to prepare for
17 these questions?

18 A. No.

19 Q. Do you know who the highest ranking
20 officer was on this scene?

21 A. No.

22 Q. Do you recognize the individual I'm
23 pointing to now who is in a white shirt and is
24 wearing what I have been told is the spaghetti
25 on the -- is that the right term?

1 Gannon

2 A. Scrambled eggs.

3 Q. -- scrambled eggs that indicates it
4 is, I believe, a high ranking officer?

5 A. I believe that's Chief Harry Wedin.
6 W-E-D-I-N.

7 Q. Did you see Chief Purtell in this
8 video at some point?

9 A. I haven't seen Chief Purtell yet.

10 MR. STECKLOW: Off the record.

11 (Discussion off the record.)

12 MR. STECKLOW: Back on the record.

13 Q. At this point the police are not
14 allowing the protestors to move south. In the
15 video at this point we're watching. The
16 police are not allowing the protestors to move
17 further south.

18 A. Right.

19 Q. Is that accurate?

20 A. Yes.

21 Q. Do you have any understanding as to
22 why they would stop the protestors from
23 proceeding south?

24 A. I do not.

25 Q. Do you have a reason to understand

1 Gannon

2 why they would not allow them to proceed east
3 on Wall Street?

4 A. No, I do not.

5 Q. Do you --

6 A. I'm sorry. Let me back up. I had
7 my direction wrong. I thought you were
8 talking about crossing -- crossing Broadway to
9 go -- that would be west, not east.

10 (Reporter requested clarification.)

11 A. I misunderstood what he said. I
12 thought he was talking about going west on --
13 going west to cross the street which is, upon
14 further consideration, was not what he meant.
15 He meant the opposite. He said going east,
16 east on Wall Street.

17 Q. I'm going to withdraw it and ask
18 the question again for a clean record.

19 A. Okay.

20 Q. You have already testified that at
21 this point in the video the officers are not
22 allowing the protestors to proceed south on
23 Broadway past Wall Street, correct?

24 A. Correct.

25 Q. Are the Police Officers allowing

1 Gannon

2 them to go west in the crosswalk to the other
3 side of the sidewalk on Broadway?

4 A. It appears no.

5 Q. Are the police officers allowing
6 them to go east into Wall Street?

7 A. No.

8 Q. Do you have a reason -- Do you
9 understand why they couldn't allow the
10 protestors to go south?

11 A. No.

12 Q. Do you have a reason or an
13 understanding as to why the officers couldn't
14 let the protestors cross Broadway and go to
15 the west side of the sidewalk?

16 A. No.

17 Q. Do you have a reason or an
18 understanding as to why --

19 A. Other than -- let me clarify that.
20 Other than a large group like that. You have
21 traffic coming south on -- south on Broadway,
22 so to let the large group cross may impede
23 traffic for more than the normal cycle of
24 lights. So that would -- it would impact
25 traffic coming south on Broadway if you let

1 Gannon

2 them go west on -- go west across Broadway.

3 Q. How many lanes of traffic are on
4 Broadway around Wall Street?

5 A. I want to say it's four. One, two,
6 three, four. I believe it's four.

7 Q. And how many were open to vehicular
8 traffic at this point from the video?

9 A. From -- based on the previous one,
10 I believe traffic was flowing south on
11 Broadway. I don't think it had stopped. I
12 think it was flowing.

13 Q. And how many lanes was traffic
14 flowing in?

15 A. I saw at least two. Because I saw
16 traffic. I saw a big bus. The previous
17 video, not this video, but the previous but --
18 it was a bus and there was other folks in two
19 lanes. So -- that was from the previous
20 video.

21 Q. Okay. I believe, and we'll get
22 back to that previous video. I believe that
23 there was one lane of traffic open. I think
24 the second lane of traffic had a line of
25 police vehicles in it?

1 Gannon

2 A. Could be.

3 Q. And so my question --

4 A. At some point -- well, at some
5 point. Don't forget. We watched that video
6 from -- we watched that video from the --

7 Q. We watched about 7 to 10 minutes of
8 the video?

9 A. And early on it was, you know,
10 traffic was flowing south on Broadway.

11 MR. STECKLOW: Put the other video
12 back on.

13 Q. While we are doing that, let me ask
14 you. Do you have a reason as to why the
15 officers wouldn't allow the protestors to turn
16 east onto Wall Street?

17 A. I would think because the New York
18 Stock Exchange is east on Broadway -- east on
19 Wall Street. So on this day, I believe --
20 this is the anniversary date, correct? Yeah.
21 So I think the anniversary date there was --
22 the protestors had made some statements as
23 they wanted to shut down Wall Street. So to
24 let them go down Wall Street would create a
25 problem.

1 Gannon

2 Q. So the reason they weren't allowing
3 them to turn east was to avoid creating a
4 problem?

5 MS. ROBINSON: Objection. You can
6 answer.

7 A. Avoiding -- avoiding shutting down
8 the stock exchange.

9 Q. And there are further intersections
10 between Wall Street and Broadway and the
11 entrance to the stock exchange, are there not?

12 A. Say that again.

13 Q. There are further intersections
14 after Broadway and Wall Street before you
15 would get to the entrance of the stock
16 exchange, correct?

17 A. No. If you go east on Broadway --
18 east from Broadway down -- from Broadway east?

19 Q. Uh-huh.

20 A. No, no. The stock exchange is --

21 Q. Isn't it the federal building there
22 with George Washington in front?

23 A. Yeah, but that's -- if you get
24 to -- I'm sorry. Finish your question.

25 Q. And isn't the stock exchange

1 Gannon

2 cater-corner to that statue?

3 A. It's opposite. Cater-corner it's
4 on the opposite corner, but there's no --
5 there's no intersections between Broadway and
6 I don't remember what that -- where Federal
7 Hall is there is a street there, but you've
8 already passed the exchange on the right-hand
9 side. If you hit Federal Hall -- if you reach
10 Federal Hall, the stock exchange is on the
11 right-hand side.

12 Q. I believe --

13 A. I believe that's correct.

14 Q. I believe the entrance to the stock
15 exchange is on Broad Street, not on Wall
16 Street and that you actually have to turn from
17 Wall Street onto Broad to get to the entrance.
18 But I think that's far afield at this point.

19 A. But there's no -- there's no
20 intersection. I think that was your point.

21 Q. The intersection is Broad Street.
22 Back onto this video. How many lanes of
23 traffic are open to the vehicular traffic at
24 the intersection of Wall and Broadway at
25 7:45 a.m.?

1 Gannon

2 A. Well, there is the bus lane on the
3 west side of Broadway and there is a white bus
4 there. I don't know what the make is there,
5 in the center lane of traffic.

6 So I see 2. And there is a parked
7 car in the east most lane, and that's -- that
8 appears to be double marked.

9 Q. So you see two lanes of traffic at
10 7:46 a.m.?

11 A. Right. The bus lane is open, which
12 is the west and most lane and the middle lane
13 is open, which has traffic in it.

14 Q. And the double parked car you
15 believe that's a NYPD vehicle?

16 A. I don't know. It could be a black
17 town car. I don't know.

18 Q. So you believe that as the police
19 are setting up barriers here they would allow
20 a black town car to double park there?

21 A. (No response.)

22 Q. Now that you see --

23 A. I don't mean to laugh. I'm sorry.
24 I'm sorry. Let's go off the record for a
25 second. I don't want to be a wise crack.

1 Gannon

2 Q. There is a question pending.

3 A. Okay.

4 Q. Do you believe the NYPD would allow
5 a vehicle to double park there at this moment
6 in time?

7 A. In -- in Manhattan? A black car
8 could pull over anywhere and drop somebody off
9 even though the Police Officer doesn't want
10 them to park there. It would be anybody. I
11 could be somebody picking up, somebody
12 dropping off, somebody momentarily -- or it
13 could be a police car parked there.

14 But my point, the reason I was
15 laughing is because I've been in Manhattan so
16 long. People disregard anything and they just
17 want to stop and drop their person off. That
18 could be a number of different things.

19 Q. Now that the bus has moved past the
20 image, can you see that, in fact, the bus lane
21 is not open but there are Police Officers
22 there with barricades blocking the bus lane?

23 A. What I see is there's people --
24 there's Police Officers moving barriers, but
25 the bus lane is not blocked. Don't forget,

1 Gannon

2 bus lanes aren't not occupied with anything.
3 Bus lanes are open so that buses can drive
4 through them. So it's not like -- it's not
5 like there's -- there's nobody excluding buses
6 there. That's a lane of traffic open for
7 southbound buses.

8 Q. 7:44 the bus lane is open?

9 A. You see the barriers are on the
10 sidewalk?

11 Q. Yes?

12 A. So the bus lane is open for
13 traffic.

14 Q. At this point what we were watching
15 is further up after the big bus comes down and
16 at that point you can't see what's going on in
17 the bus lane and here you see what I believe
18 is an NYPD barrier truck.

19 Do you see the lights on top of
20 that truck that's stopped in the bus lane?

21 A. Yes.

22 Q. So --

23 A. That's not --

24 Q. Did you see the black car pull up
25 just now and move up slightly.

1 Gannon

2 A. I'm sorry. I was looking at the
3 barrier truck. The black car that's double
4 parked on the east side?

5 Q. Uh-huh.

6 A. I wasn't -- if you could rewind it
7 for a second. I wasn't watching. I was
8 watching further north. I was watching the
9 barrier truck.

10 Q. At this point there is only one
11 lane of traffic proceeding south on Broadway,
12 correct?

13 A. There's -- no. Incorrect. There
14 is -- there is only one lane of traffic that
15 has vehicles in it. The bus lane is open for
16 southbound traffic. There is two lanes there.
17 There is no obstruction in the southbound
18 lane. The barrier truck is a full block.

19 Q. Now that the bus has moved and you
20 can see what was in the bus lane, does it look
21 like there is an obstruction there?

22 A. Yes. There's -- officers are
23 moving the metal barrier in place. That's not
24 put there to block pedestrian -- block
25 vehicular traffic. Now if that stays there

1 Gannon

2 that's a different -- if you can show that to
3 me. But right now when you showed me that
4 video the bus lane was open. Unoccupied --
5 the bus lane was open, but it was unoccupied
6 with traffic.

7 Q. How many lanes of traffic are open
8 at this point at 7:46 and 40 seconds?

9 A. There's traffic running in the
10 middle land. Let's see what they do with
11 the -- see they're putting the barriers on the
12 sidewalk. They're not preventing traffic from
13 going down the bus lane. They're putting the
14 barriers together to be on the curb line.

15 Q. At that moment in time they were
16 preventing vehicles from using the bus lane,
17 correct? That moment in time?

18 A. That moment in time they were
19 putting the barriers together. For a moment
20 of time they were in the sidewalk to put those
21 things together. Otherwise -- but we're not
22 actively blocking the bus lane there. You
23 know what I'm saying? I mean it's a fine
24 point, but we're not -- if those barriers were
25 in the middle of the street right now I would

1 Gannon

2 agree with your point that the bus lane was
3 closed, but the bus lane now is wide open.
4 See there? I mean -- ooh, except for those
5 people about to get hit with the car.

6 (Reporter requested clarification.)

7 A. No. That was a wise comment.
8 People about to get hit with the car.

9 Q. So at this point how many lanes of
10 traffic are open to vehicles?

11 A. Two.

12 Q. How many lanes of traffic are being
13 used by vehicles?

14 A. The buses in the center. The bus
15 at the top of the screen, that looks like
16 there's a bus in the center lane. At the top
17 of the screen, which would be north of --
18 north of Wall Street. I forget what that
19 block is, that cross street.

20 Q. The reason we're looking at this is
21 previously you said the reason they
22 couldn't -- one of the reasons why they might
23 not have allowed protestors to cross the
24 street is because it would obstruct vehicular
25 traffic.

1 Gannon

2 A. Correct.

3 Q. Isn't the NYPD, in the way that
4 they are handling the vehicular traffic,
5 they're early obstructing it?

6 A. No.

7 Q. So this is how Broadway traffic
8 looks on a normal basis?

9 A. The traffic -- well, I don't know
10 what it looks like on a normal basis. That's
11 day to day. But traffic here, there's a bus
12 flowing south right now. Traffic is open on
13 Broadway.

14 Q. There's one bus flowing south. We
15 see no other vehicular traffic --

16 A. There's a -- there's a --

17 Q. I only see a van coming down.

18 A. Right.

19 Q. So is the point being -- your point
20 that they couldn't possibly allow people to
21 use the crosswalk because it would affect
22 vehicular track, on this day vehicular traffic
23 was already being affected. Isn't that
24 correct?

25 A. No. I said they wouldn't be

1 Gannon

2 allowed-- if you -- if they made the west --
3 westbound turn onto across Broadway, that
4 would impact southbound vehicular traffic,
5 which is clearly the case.

6 Q. But isn't southbound vehicular
7 traffic already being impacted by the police
8 conduct on that day?

9 A. Momentarily at best, but traffic
10 was not stopped. It was flowing.

11 Q. What directives, procedures or
12 changes were made as a result of public or
13 press response to the policing after the
14 Republican National Convention in 2004?

15 A. Why don't you do me a favor. I
16 need to keep saying repeat this, but we just
17 switched gears from today to 2004. Just read
18 that again, please.

19 Q. What directives, procedures or
20 changes were made as a result of public or
21 press response to the policing at the protest
22 of the Republican National Convention in 2004?

23 A. Oh, they were-- there were several
24 changes from -- as a result of the Republican
25 National Convention. We used improvements to

1 Gannon

2 our mass arrest processing center, which is --
3 Ill refer to it as MAPC from now on, M-A-P-C.
4 MAPC, there were up upgrades. They added more
5 computer terminals to process booking. They
6 added live scan machines, which are
7 fingerprint machines.

8 We had a -- when we're doing mass
9 arrests, we took Polaroid photos of the
10 arrested individuals so that the arresting
11 officers could track -- could keep better
12 track of or help identify, I should say, the
13 people that they were arresting. Especially
14 in mass arrests where they're processing
15 multiple arrests.

16 Oh, we -- our folks in the Legal
17 Bureau, we put a representative in MAPC and we
18 had -- we had a greater amount of attorneys in
19 the field to help, as a resource, to help the
20 incident commanders in the field.

21 Q. Can you identify any other changes
22 made as a result of the Republican National
23 Convention policing?

24 A. That's all that comes to mind right
25 now.

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2

Q. Were there any changes made to the
policing of sidewalk protests as a result of
public or press response to the RNC policing?

5

A. No. We -- the NYPD or the City
doesn't really make changes based on press
releases or press inquiries. So I don't think
anything was ranged as a result of those
issues.

10

Q. Were there any changes made to the
policing of sidewalk protests as a result of
RNC litigation?

13

A. The City and the Department don't
make changes based on filed cases and things
like that. Filed -- filed lawsuits.

16

Q. Were any changes made in regards to
the policing of sidewalk protest as a result
of legal determinations made in RNC
litigation?

20

A. I don't think so, no.

21

Q. Did the City of New York consider
the policing of sidewalk protests during the
Republican National Convention problematic?

24

A. Did the -- say that again.

25

Q. Did the City of New York consider

1 Gannon

2 the policing of sidewalk protests during the
3 Republican National Convention in 2004
4 problematic?

5 MS. ROBINSON: Objection. You can
6 answer.

7 A. Sidewalk demonstrations, was it
8 problematic? I don't know how to answer that
9 one. I don't know. If you give me --

10 Q. Did the City of New York believe
11 that they exceeded the limits of
12 constitutional power on policing during the
13 policing of sidewalk protest of the Republican
14 National Convention in 2004?

15 A. I'm not understanding the question.

16 MR. STECKLOW: Read back not the
17 last question, but the one before,
18 please.

19 (Record read.)

20 A. I would say no.

21 Q. Did the policing of sidewalk
22 protests change in any way from the Republican
23 National Convention to Occupy Wall Street?

24 A. No.

25 Q. What steps did the city take to

1 Gannon

2 provide members of service with dispersal
3 orders in any matter including via finest
4 messages, roll call, muster point, handouts or
5 any other steps taken to ensure compliance by
6 members of service on the scene with the
7 issuance of those dispersal orders?

8 A. Well, there was -- there was
9 training for, I believe, the disorder control
10 unit did training ahead of the protests so
11 that there was an understanding that when you
12 read the -- read the warnings through a, say
13 for example, a bull horn that you would in the
14 rear of the group assembled you would put
15 somebody in the rear of the group so that when
16 you made the announcement with the warnings
17 you would get an acknowledgment from the
18 officer or whoever was posted in the rear of
19 the group that the message -- the warnings
20 could be heard in the back so that everybody
21 was able to at least hearing the warnings,
22 prior to -- dispersal warnings.

23 Q. Were written dispersal orders
24 issued?

25 A. Were they issued?

1 Gannon

2 Q. Yes.

3 A. Well, I don't know if they were
4 issued. They were -- they were on hand. The
5 task forces have this -- they do this
6 protest-related issues a lot.

7 The task force have the dispersal
8 orders. Legal, our legal representatives have
9 the dispersal orders. So it's -- the people
10 who would be reading the dispersal orders had
11 the dispersal orders or had access to the
12 dispersal orders. They weren't issued to
13 everybody but, you know, not everybody is
14 going to read them.

15 Q. Who provided the written dispersal
16 orders?

17 A. Well, I'm sure legal, our Legal
18 Bureau had the dispersal orders and I know
19 disorder control through their training had
20 the dispersal orders.

21 Q. Who wrote the language in the
22 dispersal orders?

23 A. Who wrote it? I don't know.

24 Q. How many of these cards were
25 issued?

1 Gannon

2 A. No. It's a -- the ones I've seen
3 are -- it's a sheet of paper with the -- with
4 the -- so it's -- how many were issued? I
5 don't know.

6 Q. How were they distributed?

7 A. I don't know.

8 Q. What steps, if any, were taken to
9 ensure that the dispersal orders that were
10 issued or distributed were read from?

11 A. How were they --

12 Q. How did they ensure that these were
13 actually the orders that were read?

14 A. Well, like I said before, the folks
15 who read those at that moment in time when
16 they're going to read the dispersal orders,
17 they're the folks that do this kind of stuff
18 for us at the Police Department all the time.
19 I don't know, you know, I don't know how we
20 assure that it was the one dispersal order --

21 (Reporter requested clarification.)

22 A. The orders are used all the time so
23 I -- it's not like there is varying copies of
24 it. So I mean the people who have it have the
25 proper copy because they do this kind of stuff

1 Gannon

2 all the time.

3 MR. STECKLOW: Let's take a quick
4 break. The time is now 2:33 and we are
5 requesting to take a quick break.

6 (Recess taken.)

7 MR. STECKLOW: The time is now 2:39
8 and we are back on the record. We are
9 still at my office at 217 Centre Street.

10 Q. Lieutenant, when there is a crowd
11 and an order to disperse is given, how much
12 time does the NYPD believe should be provided
13 to the individuals to disperse?

14 A. A reasonable amount of time. The
15 exact time I don't know, but it -- it's -- we
16 read the warnings intentionally to give people
17 an opportunity to leave. The more people that
18 leave the better it is when the warnings are
19 given. But, you know, there is a sense of
20 fairness to it that it should be a reasonable
21 amount of time.

22 Q. And so is there a specific amount
23 of time required in order to be
24 constitutionally compliant?

25 A. I don't know. I don't know the

1 Gannon

2 answer to that question.

3 Q. How does the NYPD monitor
4 compliance with giving sufficient amount of
5 time for people to leave?

6 A. Well, supervision will be probably
7 the strongest measure. When these orders are
8 given, usually it's a ranking officer giving
9 the instructions and giving the -- pardon me.
10 The dispersal order.

11 So there is supervision there to
12 make sure it's reasonable and it's -- it's
13 done with a -- to give people an opportunity
14 to leave if they're no longer interested in
15 staying.

16 Q. So is there a way that the NYPD
17 monitors to ensure that there is compliance
18 with that?

19 A. I would say they monitor it through
20 supervision. So the person giving the orders
21 is, I would say, is usually a ranking person
22 and then there's levels of supervision above
23 him or her, and that's how we would ensure
24 it's done correctly.

25 Q. If people are marching in a group

1 Gannon

2 and they get penned in by the NYPD --
3 withdrawn.

4 If people are marching in a group
5 and they get penned in because there is now
6 100 people behind them and they are given an
7 order to disperse, how should they act in
8 order to comply?

9 A. That's a hypothetical. I don't
10 know how to answer that question. Enough time
11 to -- if people are saying, "No, no. We want
12 to get out. We want to get out" then we're
13 going to let them get out.

14 It's not like -- oh, it's too late,
15 you know. People are telling us -- in that
16 scenario if people came up behind them and
17 these folks in the front were saying -- in
18 your scenario were saying "No, no. We want to
19 leave. We want to leave," if it was within a
20 reasonable amount of time, we would let them
21 leave. We would ensure they left.

22 Q. You testified earlier that one of
23 the responses to RNC policing was to have more
24 Legal Bureau attorneys on the ground at large
25 scale protests; is that correct?

1 Gannon

2 A. Correct.

3 Q. Why are legal bureau attorneys on
4 the ground?

5 A. They provide a resource to the
6 incident commander. So if some legal issues
7 arise, they're there to answer the questions
8 for the incident commander.

9 For example, during Occupy Wall
10 Street it was a -- there were things that
11 popped up in Occupy Wall Street that you
12 really couldn't anticipate. There was an
13 issue with inside Zucotti Park where there was
14 a point where they wanted to set up maybe
15 tents or tarps and things like that and it was
16 prohibited. And then one person set up a
17 Sukkah tent. S-U-C-C-O-T-H (sic). How is
18 that? That's pretty good.

19 Sukkah tent and confirmed with
20 legal. Now you have all sorts of issues
21 there. Religious. Is it -- is it a
22 structure? Is it not a structure. Those were
23 elements that we leave to our legal folks and
24 they provide some counsel.

25 And there was also a circumstance

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2

where unfortunately some women were sexually

3

abused inside the park. So they put up a

4

structure towards the rear of the park where

5

women could go to kind of be safer than in the

6

general population of the park. So, again,

7

it's a structure. It's something where, you

8

know, it wasn't necessarily in the allowable

9

rules.

10

But our legal folks give us

11

counsel. What's allowable, what's not

12

allowable, and then you make a judgment. And

13

in this case women being sexually abused maybe

14

outweighed the fact that we don't allow tents.

15

So that would be -- Occupy Wall Street was

16

a -- was a wonderland of "what if's" for legal

17

people.

18

We'd run stuff by them. You know,

19

the POPs -- the privately owned -- privately

20

owned public spaces, POPs we call them, P-O-P.

21

And you know, before Occupy Wall Street I

22

don't think anybody really knew the

23

functionality of a POP, other than it was

24

something that was agreed to when someone

25

builds a building, constructs a building.

1 Gannon

2 So that was one of the legal things
3 that we had to work through in that, you know,
4 there was -- they agreed to have these POPs
5 and they're open to the public with certain
6 rules and parameters. And then, you know, so
7 the occupy folks would take advantage of that
8 fact and they would go in there and they would
9 occupy the POPs and then they would bounce
10 around. So initially, you know, the Police
11 Department for 33 years. Before Occupy Wall
12 Street POP was something you had with a
13 sandwich. You know if you were down south you
14 had a drink or something like that.

15 But you wouldn't know what a POP
16 was because you never really dealt with it.
17 Our folks from legal, they are able to advise
18 us. So that's kind of the gist. But the core
19 of it, they're a resource for the incident
20 commander.

21 Q. What responsibilities did Legal
22 Bureau advisors have at sidewalk protests?

23 A. Responsibility?

24 Q. Yes?

25 A. To be a resource for the incident

1 Gannon

2 commander. They should be there in case the
3 incident commander says, hey, what do you
4 think about this? What do you think about
5 that? They're to be with the incident
6 commander or close to the incident or
7 available to the incident commander so he can
8 make determinations about, you know, whatever
9 question he has.

10 Q. What authority does the Legal
11 Bureau advisors have at a sidewalk protest?

12 A. I don't know if they have
13 authority. You know, but the incident
14 commander would be the determining call on
15 mostly everything. But legal has a valuable
16 role in advising him as to what to do for
17 sure.

18 Q. The Legal Bureau Advisors have a
19 role in establishing probable cause at walk
20 protests?

21 A. They certainly could help
22 establish. If there was a question they could
23 certainly advise, absolutely.

24 Q. So they would be a resource if
25 requested by an incident commander?

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2

A. Yes.

3

4

5

6

7

Q. So an incident commander would make a decision about arrests at sidewalk protests and probable cause but if they had a question about that they would ask for help from the Legal Bureau folks present?

8

9

A. They certainly could, that's correct.

10

11

Q. But if they didn't ask for help they could make these decisions on their own?

12

A. Correct.

13

14

15

16

17

Q. If a protestor is engaging in conduct for which a protestor is arrested and a non-protestor is engaging in the exact same conduct, should the non-protestor be permitted to leave without arrest?

18

19

20

21

22

23

24

A. Certainly could. You certainly could. I mean it would depend on the circumstances, but it's kind of a hypothetical. We certainly could -- you know it's not even selective. It's a matter of do you have enough people to do that kind of thing. But, you know.

25

Q. On a public sidewalk can a

1 Gannon

2 protestor be lawfully ordered to cease
3 activity or conduct at the same time that a
4 non-protestor is permitted to continue the
5 same activity or conduct?

6 A. Uh... I would think that we would
7 treat, at that point, everybody the same. For
8 example --

9 Well, I would think that people
10 conducting the same conduct would be -- would
11 be treated the same way.

12 Q. We saw earlier on the video that
13 protestors were not permitted to go south but
14 people who were not protesting were given an
15 avenue into the street in order to proceed
16 south on Broadway towards Wall Street. So is
17 that a fair way of applying the law in that
18 situation?

19 A. Well, you have to remember we're in
20 New York City. We have to kind of strike a
21 balance to the people's right to protest and
22 assemble versus the people who have absolutely
23 nothing to do or could care less about the
24 protest and they went to go about their daily
25 business. The NYPD always tries to strike a

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2

balance between those two things. And we live in an area that's densely populated and people have other things to do.

5

6

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15

16

Q. Can the NYPD apply the law differently based on the way people are dressed?

17

A. The way people are dressed?

18

Q. Yes.

19

20

A. Sounds like a trick question, Counselor. Could you read that to me again.

21

22

23

Q. Can the NYPD apply the law differently based on the way people are dressed?

24

A. No.

25

MR. STECKLOW: Can we get the video

1 Gannon

2 queued up of the incident where they stop
3 people and separate them into two groups?

4 MR. SHARKEY: Yes. I have it right
5 here.

6 MR. STECKLOW: This is also from
7 9/17/12.

8 (Video played.)

9 Q. Okay. In this scene we just saw
10 people trying to -- protestors trying to march
11 on Broadway and at some point the police took
12 a spot and just separated them into two
13 groups. Is that accurate?

14 A. Yes.

15 Q. Do you understand the reason why
16 the Police Officers would do this?

17 A. I don't.

18 Q. Did the City of New York have an
19 explanation for why the protestors would be
20 split up like this?

21 A. Based on what I see on the video, I
22 can't determine why they would have done that.

23 (Video played.)

24 Q. I would like you to keep your eye
25 on the guy with the gray T-shirt and shorts,

1 Gannon

2 the gray beard and sunglasses. Right now he
3 is against the side of the building?

4 A. He's got a sticker on his chest
5 there or something?

6 Q. Yes.

7 (Video played.)

8 Q. At this point the Police Officer is
9 approaching him. Has this individual done
10 anything distinguishable from anybody else in
11 the picture of the protestors to warrant
12 arrest?

13 A. I don't have any idea.

14 Q. Can you see anything in the video
15 that would give you any idea?

16 A. The video I've seen right now, I
17 don't have -- I don't have any idea why -- why
18 they would -- why they would have drawn
19 attention to this individual. I don't know.

20 (Video played.)

21 Q. Do you see the individual behind
22 them with the button-down shirt, the backpack
23 now next to him?

24 A. The yellow shirt?

25 Q. Yeah. The yellow shirt, there is

1 Gannon

2 the two to three -- there is two women there
3 standing there as well?

4 A. Yes.

5 Q. And they just arrested a woman in a
6 dress -- it's a black and white dress and
7 sunglasses, with a bag over her back; is that
8 correct?

9 A. It looks like they placed her in
10 handcuffs, yes.

11 Q. Do you see a reason why she would
12 stand out from anybody else on the sidewalk?

13 A. Now, remember, earlier we talked
14 about that we're assuming that something
15 happened right here. Something could have
16 happened previous to this taping and that
17 could be. Based on this I can't tell you why
18 they -- what was the basis for the arrest.
19 It's hard to tell.

20 Q. At the time that they separated
21 these into two groups, did you -- from that
22 time forward until now have you heard anyone
23 give any dispersal orders?

24 A. No.

25 Q. And you've seen them arrest at

1 Gannon

2 least four people at this point from this
3 group, correct?

4 A. The fourth one here? This woman
5 here? Yes. Including this woman in gray,
6 that would be four.

7 Q. Now we heard a warning for the
8 first time in this video, correct?

9 A. What did he say? Do you know?

10 Q. "If you don't move you will be
11 arrested."

12 MS. ROBINSON: Objection. That's
13 not what he said.

14 MR. STECKLOW: Ms. Robinson why
15 don't you tell us what he said, since
16 I --

17 MS. ROBINSON: "Final warning" is
18 what I heard. It would be suggestive of
19 not being the first one.

20 MR. STECKLOW: So what did he say?

21 MS. ROBINSON: I don't know, but I
22 heard "final warning." So let's be, at
23 least, accurate.

24 Q. So the camera did show they were
25 actually at Wall Street, correct?

1 Gannon

2 A. Correct. People are leaving.

3 Q. People are now being allowed to go
4 in the direction of where they just stopped
5 people from going, correct?

6 A. Yes, yes. They're going -- that's
7 north on Broadway.

8 Q. Do you know if the City of New York
9 had any goals of the NYPD during Occupy Wall
10 Street?

11 A. Any goals?

12 Q. Yes.

13 A. The goal is always to allow
14 peaceful assemblage and protest, balancing
15 that with the right -- like I said before,
16 balancing that with the rights of the other
17 folks not to be involved in the protest. That
18 would be the goal. That's always the goal.

19 NYPD and the City of New York, we,
20 you know, accept -- not accept, but we --

21 Peaceful protestors happens all
22 over the city for years and year and years.
23 It's not something that we're not used to
24 accommodating and promoting at certain points.

25 Q. What criteria are used to assign

1 Gannon

2 on-scene supervisors for the anniversary
3 protest of September 17, 2012?

4 A. What criteria?

5 Q. Yes.

6 A. Wylie, just repeat that sentence.
7 What criteria?

8 Q. What criteria were used to assign
9 on-scene supervisors for the anniversary
10 protest of September 17, 2012?

11 A. Well, would depend on -- it was
12 hard, very hard to tell with Occupy Wall
13 Street how many people were going to -- were
14 going to attend an event, attend the protest.
15 They have a -- they weren't a typical -- they
16 weren't a typical group where you would sit
17 down with them and work out the details of
18 what they wanted to do and then accommodate
19 them as far as different routes, if they were
20 going to march or not.

21 They were actually, part of
22 their -- part of their guiding principles, if
23 you want to call it that during this protest,
24 was that they were leaderless, in effect.

25 So how is it determined? You know,

1 Gannon

2 there is open source reporting on -- where
3 people might show up and do things and then
4 you try to -- you try to gauge what that might
5 be, and then assign people accordingly.

6 Q. I'm trying to ascertain what
7 criteria used to determine which members of
8 the service were assigned as on-scene
9 supervisors for the anniversary protest. Not
10 how many --

11 A. Oh.

12 Q. -- not where, but which particular
13 officers were utilized as supervisors on scene
14 for the anniversary protest.

15 A. I missed the first part.

16 Q. What criteria did the City of New
17 York use to make that determination?

18 A. That would be determined by -- in
19 all likelihood, that was determined by Chief
20 Purtell, Patrol Borough Manhattan South, in
21 consultation probably with Inspector Winski.
22 He was the commanding officer of the 1st
23 Precinct at the time. But they would
24 determine who the supervisors were.
25 Especially the higher ranking supervisors.

1 Gannon

2 Q. What criteria did Chief Purtell in
3 consultation with Inspector Winski utilize to
4 make that determination?

5 A. I don't know. You have to ask
6 those folks.

7 Q. I ask the same question, but now
8 more broadly about Occupy Wall Street. Let me
9 ask the question now before you give an
10 answer.

11 What criteria did the City of New
12 York use when determining which specific
13 supervisors to assign to Occupy Wall Street
14 protest during Occupy Wall Street?

15 A. Same -- basically the same answer.
16 It would have been Chief Purtell and Patrol
17 Borough Manhattan South. Chief Purtell would
18 make the determination as to who the
19 supervisors would be, and he'd have -- and
20 especially the higher ranking people.

21 Q. So do you know what the criteria
22 that Chief Purtell utilized to make these
23 determinations when assigning high-ranking
24 officers to police Occupy Wall Street?

25 A. No, but Chief Purtell, a highly

1 Gannon

2 experienced guy. He would -- I don't know
3 what he would use, but it would be his
4 judgment as to who to use.

5 Q. How does the NYPD-- withdrawn.

6 How does the NYPD and the City of
7 New York monitor, and members of the service
8 understand and are aware, of the
9 constitutional limits on police power?

10 A. I thought there was more coming.

11 Well, we do it through supervision
12 and training. The Legal Bureau is there. The
13 officers are -- there are several lines of
14 supervision at these events. Police
15 supervision is -- is closely matched. The
16 officers really don't take independent action.
17 I mean they can if something would were to
18 happen to -- if an officer was attacked or
19 something like that. But for the most part
20 it's measured and it's done in an orderly
21 fashion with direction being given to make
22 arrests for the most part. So through
23 supervision and training I would say that's
24 how we answer that question.

25 Q. It seems like supervision and

1 Gannon

2 training may provide the knowledge. I'm
3 asking how the NYPD monitors these individuals
4 have that knowledge.

5 A. I don't know how you would monitor
6 that. I mean it's training. Training is, you
7 know, the officers are trained. I don't know.
8 I mean it's -- I don't know how you would
9 monitor that. I don't know.

10 Q. How does the NYPD monitor that
11 members of service understand and are aware of
12 the New York State's constitutional limit on
13 police power as set forth in People v. Jones
14 in the New York State Court of Appeals
15 decision issued in November 2007?

16 MS. ROBINSON: Objection. Outside
17 the scope. You can answer.

18 A. Well, the legality of stuff again.
19 Our legal folks are there to make sure that,
20 you know, that everything is going according
21 to the constitution. The officers know
22 through their training that there is
23 constitutional limits on what's allowed,
24 what's not allowed. The supervisors who tend
25 to be more senior people, more experienced

1 Gannon

2 people have a -- have a deeper knowledge of
3 those things. So I think all those things
4 combined is how the City of New York and the
5 Police Department would ensure that happens.

6 Q. Where do those higher ranking
7 individuals gain that deeper knowledge?

8 A. Well, one is through experience.
9 You know, you've done protests, you've asked
10 this question of legal in the past. You know
11 what the answer is, you know what the
12 circumstances are. You know, I think that's a
13 big part of it. They also get -- you know,
14 there is also Legal Bureau bulletins we put
15 out. The department. I keep saying "we."
16 That the Police Department puts out. That
17 when a case is decided, it's a controlling
18 case, that the legal bureau will makes sure
19 that there is a Legal Bureau bulletin that
20 would go out and that would be, you know,
21 disseminated to everybody and the officer --
22 all the way down from the legal bureau all the
23 way down to everybody in the office. Nowadays
24 especially as all that stuff is available on
25 their smartphones so it's great actually.

1 Gannon

2 Q. How does the NYPD monitor or track
3 whether or not all these members of the member
4 of service are reading the Legal Bureau
5 bulletins?

6 A. Well, you can-- in the -- say, for
7 example, you're an officer assigned to a
8 precinct, regular precinct, and say something
9 comes down that's a legal precedent that Legal
10 determines, boy, we got to get this out now.
11 So Legal Bureau bulletins need to be drafted.
12 It's a formal brief basically.

13 So in a short term notice we have a
14 thing called a Finest messages, F-I-N-E-S-T
15 messages. In the old days it was a teletype.
16 It's still a machine, now it just comes out of
17 a printer. Finest message would be put out to
18 all commands and that would -- that would say,
19 hey, this is -- this is now the rules. These
20 are now the rules. And then how the cop in
21 the precinct would get trained is that the
22 commanding officer is aware of the Finest
23 messages as they come through as our other
24 supervisors in the precinct. And there is a
25 training sergeant. A training sergeant,

1 Gannon

2 something like that. He would start to brief
3 all the outgoing platoons of Police Officers
4 about this -- about this new legal
5 constitutional issue, whatever it would be.
6 So at its most ground level form, that's
7 probably the best way to describe it.

8 Q. You have described how they try and
9 distribute this information. I'm asking you a
10 different question. The question I have asked
11 was: How does the NYPD monitor whether or not
12 the members of service understand and are
13 aware of this information? How do they
14 monitor -- withdrawn.

15 How do they monitor whether or not
16 these legal bureau bulletins are read by the
17 high ranking officers all the way down to the
18 members of service?

19 A. Well, the training sergeants in the
20 precinct, let's just go with the Precinct
21 level folks for the moment. The training
22 sergeant, his job is to train people. So
23 he'll go through -- he'll go through several--
24 several days of training on the subject
25 because obviously people -- Police Officers

1 Gannon

2 don't work seven days a week. They rotate in
3 and out and their days change off. So there
4 is a period of time where everyone would cycle
5 through the training sergeant's training and
6 at each roll call, and then he would be able
7 to educate all of them. The higher-ups, you
8 know, a lot of that is -- the higher -- the
9 higher-ranking officers are aware of the Legal
10 Bureau bulletins. They read the Finest
11 messages. They're senior people so it's not
12 like -- they have to be, you know, on their
13 game as far as these changes in the law and
14 different things. So they're self-responsible
15 for kind of doing that I guess is the best way
16 of describing it.

17 Q. So the fact that they're
18 self-responsible, does that mean that the NYPD
19 does not know whether or not any of these
20 higher ranking officers actually read the
21 Legal Bureau bulletins?

22 A. I don't know. I don't know if
23 they -- yeah. Unless you -- I don't know how
24 you would measure that. I don't know.

25 Q. If the NYPD were to learn that a

1 Gannon

2 high-ranking officer was not reading Legal
3 Bureau bulletins, what would they do?

4 A. Provide instruction, I would think,
5 or education. And for the most part if -- if
6 there was something going on where someone
7 wasn't aware of it, Legal, I have stated that
8 description at the scene rather of Occupy Wall
9 Street where something is going on. Legal is
10 there to say, oh, you know, to interject
11 themselves and say, hey, this Rule A is now
12 Rule B. Make sure you're aware of it, you
13 know, and things like that.

14 Especially something where it was
15 so broad as to be published in a -- so
16 important rather to be published in the Legal
17 Bureau bulletin.

18 Q. You previously testified that Legal
19 Bureau is there to be a resource when
20 requested by the white shirt supervising
21 commanders, correct?

22 A. Correct.

23 Q. So they're not going to step in
24 unless they're requested for that information,
25 correct?

1 Gannon

2 A. But they can -- they can -- no.
3 Yeah. That -- that is correct if you're
4 dealing with a situation, but Legal Bureau at
5 any time can come in and provide advice if
6 they see something that's -- that needs to
7 be -- needs to be addressed. I mean it's a --
8 legal is -- they are -- they're a nice asset
9 to have.

10 Q. Do you know how many Legal Bureau
11 bulletins have been issued about disorderly
12 conduct in sidewalk protests?

13 A. I do not.

14 Q. Does the NYPD measure knowledge of
15 New York State's constitutional limits on
16 police power as set forth in People v. Jones
17 during reviews of members of the service?

18 MS. ROBINSON: Objection. Calls
19 for a legal conclusion. You can answer.

20 A. I don't know.

21 Q. I am going to ask the same question
22 with different ranks. Does the NYPD measure
23 knowledge of New York State's constitutional
24 limits on police power as set forth in the
25 People v. Jones decision during reviews of

1 Gannon

2 sergeants?

3 MS. ROBINSON: Objection. Outside
4 the scope.

5 A. I don't know.

6 Q. Does the NYPD measure knowledge of
7 New York State's constitutional limits on
8 police powers as set forth in People v. Jones
9 during reviews of lieutenants?

10 MS. ROBINSON: Objection. Outside
11 the scope.

12 A. I don't know.

13 Q. Does the NYPD measure knowledge of
14 New York State's constitutional limits on
15 police powers as set forth in People v. Jones
16 during reviews of captains?

17 MS. ROBINSON: Objection. Same
18 objection.

19 A. I don't know.

20 Q. Does the NYPD measure knowledge of
21 New York State's constitutional limits on
22 police powers as set forth in People v. Jones
23 during reviews of inspectors?

24 MS. ROBINSON: Same objection.

25 A. I don't know.

1 Gannon

2 Q. Does the NYPD measure knowledge of
3 New York's State's constitutional limits on
4 police powers as set forth in People v. Jones
5 during reviews of chiefs?

6 MS. ROBINSON: Same objection.

7 A. I don't know.

8 Q. Did the NYPD measure knowledge of
9 New York State's constitutional limits on
10 police power as set forth in People v. Jones
11 during the assignment of the supervising
12 officers at Occupy Wall Street?

13 MS. ROBINSON: Same objection. You
14 can answer.

15 A. I'm thinking actually. Could you
16 read that back again or could you say it?

17 MR. STECKLOW: You can read it
18 back.

19 (Record read.)

20 MS. ROBINSON: Same objection.

21 A. I don't know.

22 Q. What process is in place to review
23 policing of sidewalk protests and determine
24 whether such policing was within the
25 constitutional limits of police power?

1 Gannon

2 A. I mean there's -- when arrests are
3 made based on probable cause, a supervisor
4 will authorize the arrest to follow up on the
5 arrest to make sure that probable cause has
6 been established. Is that what you're looking
7 at? Is that what you're kind of thinking
8 there?

9 There's levels of supervision that
10 would ensure that the constitutional right of,
11 you know, we're not violating the first or the
12 fourth amendment. Supervisors ensure that
13 probable cause has been established. So
14 that's a protection against constitutional
15 violations, to make sure that the -- to make
16 sure that the officers have a probable cause
17 to make arrest.

18 Q. Is there any other process in place
19 for the City of New York to review the
20 policing of sidewalk protest by the NYPD in
21 determining whether such policing was within
22 the constitutional limits of police power?

23 A. I don't think so, no.

24 Q. I'm going to show you what has been
25 marked as -- previously marked as Exhibit 6.

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Gannon

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This involves the Bronx incident that we previously watched the video of and you had said that you had -- you had said that you also watched that video before you were in this deposition?

7

A. Yes.

8

Q. Have you seen this document before?

9

10 A. I have not. You didn't show me this earlier. No, I have not.

11

12

13

14

15

16

Q. This is a document dated January 19, 2012 from a City council member to the commissioner of the NYPD raising concerns about the conduct of the police of what occurred in the Bronx video that we watched earlier, correct?

17

18

A. Just give me a chance just to read this real quick.

19

(Witness perused document.)

20

Okay.

21

22

MR. STECKLOW: Can you read back the question.

23

(Record read.)

24

25

A. It's a letter. Yes, it is a letter. I agree it's a letter. What's the

1 Gannon

2 question? I'm not sure I follow the question.

3 Is this --

4 Q. Do we need to read the question
5 again?

6 A. Yeah. I'm getting a little tired.
7 I'm sorry.

8 MR. STECKLOW: Yes. Read the
9 question again.

10 (Record read.)

11 A. Correct.

12 Q. What actions, if any, did the NYPD
13 undertake in response to this complaint?

14 A. Specifically? I don't know.

15 Q. Are you aware that a state senator
16 named Liz Kruger also made a similar complaint
17 about the same exact incident and filed a
18 letter with the commissioner of the NYPD?

19 A. I'm not aware of that.

20 Q. Do you know if the commissioner or
21 the NYPD took any action in response to State
22 Senator Kruger's letter?

23 A. I'm not aware of that.

24 Q. In July of 2012 a group of
25 academics from Fordham Law, Columbia Law, NYU

1 Gannon

2 Law and Harvard Law School submitted a
3 130-page report to the NYPD entitled
4 "Suppressing Protest: Human Rights Violations
5 in the U.S. Response to Occupy Wall Street."

6 What investigation did the NYPD
7 undertake upon receiving that document?

8 MS. ROBINSON: Objection. Beyond
9 the scope. You can answer.

10 A. I don't know.

11 Q. These individuals who authored that
12 report sought to have a meeting with the NYPD
13 to discuss the findings concerning the
14 policing of Occupy Wall Street, including
15 issues with sidewalk protest. Did the NYPD
16 agree to meet with these academics?

17 A. I don't know.

18 Q. Did the NYPD make any changes to
19 its policing of Occupy Wall Street in response
20 to this report?

21 A. The NYPD wouldn't make any changes
22 based on a -- policy changes based on a report
23 such as that.

24 MR. STECKLOW: Okay. Let's take
25 another five-minute break and this is

1 Gannon

2 when I can say, yes, wrapping up. The
3 time is now 3:20 and we are taking a
4 break.

5 (Recess taken.)

6 MR. STECKLOW: The time is now 3:34
7 and the plaintiffs have no further
8 questions for the witness. I do
9 understand that the defense has some
10 questions.

11 MS. ROBINSON: Yes.

12 EXAMINATION BY

13 MS. ROBINSON:

14 Q. Okay. Lieutenant, I'm going to
15 show you what plaintiff has marked as Exhibit
16 3 in the deposition. You have a copy of it
17 there.

18 Did the NYPD make any policy
19 changes as -- in response to the lawsuits
20 filed on this Exhibit?

21 A. No. The NYPD doesn't make --
22 change policy or make policy decisions based
23 on filed lawsuits.

24 Q. When a representative or politician
25 of any kind sends a letter to the commissioner

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Gannon

of the NYPD regarding alleged police misconduct, how is that letter handled?

A. That letter will be -- that letter will be forwarded down to Internal Affairs Bureau for investigation.

Q. And those cases are, in fact, investigated?

A. Yes.

Q. And when we watched the LMSI video, you recall watching the LMSI video?

A. Yes.

Q. With regard to the 9/17/2012 anniversary of the protest. It showed the people on the sidewalk who wanted to leave were permitted to leave, correct?

A. Correct.

MS. ROBINSON: That's all I have for right now.

MR. STECKLOW: Okay. It's 3:36. This deposition is closed.

(Time noted: 3:36 p.m.)

1
2 STATE OF _____)
3) : ss
4 COUNTY OF _____)
5

6 I, LT. DENNIS GANNON, the witness
7 herein, having read the foregoing testimony of
8 the pages of this deposition, do hereby
9 certify it to be a true and correct
10 transcript, subject to the corrections, if
11 any, shown on the attached page.
12

13 _____
14 LT. DENNIS GANNON
15

16 Sworn and subscribed to before
17 me, this day of , 2018.
18


19 _____
20 Notary Public
21
22
23
24
25

C E R T I F I C A T E

I, ELIZABETH SANTAMARIA, a Court Reporter, do hereby certify that prior to the commencement of the examination, LT. DENNIS GANNON was sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.



ELIZABETH SANTAMARIA

1

2

----- I N D E X -----

3

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	MS. ROBINSON	188
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7

----- INFORMATION REQUESTS -----

8

(None)

9

10

E X H I B I T S

11

PLAINTIFF'S		FOR IDEN.
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12

Exhibit 1	Multi-page document	13
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13

Exhibit 2	Two-page letter dated	58
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14

April 28, 2003

15

Exhibit 3	One-page document	70
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16

Exhibit 4	One page depicting color	79
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17

copies of three photos

18

Exhibit 5	Letter dated 5/5/2014	88
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19

Exhibit 6	Letter dated 1/19/2012	99
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20

Exhibit 7	Letter dated 1/1/2012	99
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21

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22

(Retained by Counsel)

23

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25

INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

E R R A T A

I wish to make the following changes,
for the following reasons:

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LT. DENNIS GANNON DATE

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ME THIS ____ DAY OF _____, 201 .

NOTARY PUBLIC COMMISSION EXPIRES

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[8 - answer]

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[answer - attorneys]

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[attorneys - blocked]

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Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.